

RATIONALISING CORPORATE DISREGARD

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ABSTRACT

The area of corporate disregard has a poor reputation for certainty of reasoning. To provide an alternative way of approaching the issue, we conducted an empirical study of the relationship between rationale and outcome within UK corporate disregard cases from the nineteenth to the twenty-first century. We examine the evidence from three perspectives. First, we examine the broad range of instrumental rationales found in the case law by disregard rates in order to identify where issues might be arising with individual rationales. Secondly, as suggested in the wider empirical literature, we examine the rationale rates by jurisdiction in order to see whether there were problematic interpretation issues concentrated in particular parts of the court levels. Thirdly, we examine the rationale rates by substantive claim to see whether contextual aspects of the doctrine, as the court identified with family law in *Prest*, were influencing outcomes. By providing an empirical study on the rationales instrumental to corporate disregard outcomes we aim to introduce a broader evidential view of where concerns may lie, which can both aid critique of key judicial historical developments such as *Adams v. Cape Industries* (1990) and *Prest v. Petrodel Resources Ltd* (2013) and provide a broader evidence base that might aid future judicial reform of the area.

Keywords: company law, corporate disregard, veil piercing, veil lifting, empirical study

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I. INTRODUCTION

Historically the area of corporate disregard¹ has a poor reputation for certainty of reasoning and is often dismissed as “jurisprudence by metaphor or epithet.”² In key cases where the judiciary have engaged in attempted reform, such as *Adams v. Cape Industries* (1990) and *Prest v. Petrodel Resources Ltd* (2013), the identification of problems and the solutions to those problems has come down to an, admittedly skilled, but subjective judicial reasoning process of legitimising one set of case law and diminishing others. In the area of corporate disregard this has not as yet proved entirely successful and as Moore has commented, “allowing the independent legal existence of a corporate entity to be disregarded by a court only in a narrow and arbitrarily defined range of cases, is doctrinally unsustainable.”³

To provide an alternative way of approaching the issue, in this paper we present results from an empirical study of the relationship between rationale and outcome within UK corporate disregard case law from the 19th to the 21st Century. We examine the evidence from three perspectives. First, we examine the broad range of instrumental rationales found in the case law by disregard rates in order to identify where issues might be arising with individual rationales. Second, as suggested in the wider empirical literature, we examine the rates by jurisdiction in order to see if there were problematic interpretation issues concentrated in particular parts of the court levels. Third, we examine the rates by substantive claim to see if contextual aspects of the doctrine, as the court identified with family law in *Prest*, were influencing outcomes.

From our results we can observe that Agency and Façade/sham/Shell are tightly adjudicated over time and tilted strongly to a no disregard outcome. The vast majority of cases where these rationales are instrumental do not lead to a disregard outcome. This would suggest to us that neither rationale is obviously problematic in eroding the sanctity of the corporate form. In particular it would suggest that the attempted reform of Façade/sham/Shell in *Prest* was misplaced and may explain its problematic application since. Concern within our data about rationale issues that might fit a profile of eroding the corporate form are contained

¹ Veil/lifting/parting/tearing/peeping etc. are used somewhat indiscriminately at times within the case law to describe an action that affects or arguably affects the principle established in *Salomon v Salomon* [1897] AC 22 concerning the separateness of a corporation and its shareholders. In this paper we use the earlier term ‘corporate disregard,’ meaning a decision where what is at stake is whether the presumption of separate corporate personality should be upheld or disregarded. E.M. Dodd, ‘For Whom Are Corporate Managers Trustees?’ (1932) 45 HLR 1145, 1146.

² P Blumberg, *The Law of Corporate Groups: Procedural Problems in the Law of Parent and Subsidiary Corporations* (1983) 8; see also *Yukong Line Ltd. of Korea v Rendsburg Inv. Corp. of Liberia* [1998] 1 W.L.R. 294, 305 (Q.B.) (“For metaphor can be used to illustrate a principle; it may also be used as a substitute for analysis and may therefore obscure reasoning . . .”).

³ M Moore. “A Temple Built on Faulty Foundations’: Piercing the Corporate Veil and the Legacy of *Salomon V. Salomon*.” *Journal of Business Law* no. March (2006): 202.

in four areas. First, the uncertainly adjudicated rationales of Control/Domination, Statutory Interpretation and the low frequency rationales of Alter Ego, Comingling, Injustice, Instrumentality, and Siphoning. Second, the instability of interpretation of Control/Domination, Deception, Alter Ego and Injustice at the Intermediate Appeal level and third the strong pull of substantive claim over rationale outcome on all but Agency and Façade/Sham/Shell. Fourth, Deception presents a puzzling profile throughout which would warrant concern. Focusing further Control/Domination, Statutory Interpretation, Deception, Alter Ego and Injustice appear in more than one of those areas of concern.

By providing an empirical study on the rationales instrumental to corporate disregard outcomes we aim to introduce a broader evidential view of where concerns may lie, which can both aid critique of key judicial historical developments such as *Adams* and *Prest* and provide a broader basis for judicial reform development.

The paper begins by examining academic and judicial perceptions of the problems within the doctrine of corporate disregard.

II. BACKGROUND

A. *Doctrinal Foundations*

While the beginnings of corporate disregard lie in earlier cases than *Salomon v Salomon*⁴ the differences in outcome in that decision between the Court of Appeal and the House of Lords is a critical part of the doctrinal foundation of disagreement about the underlying judicial perception of what might justify disregarding the corporate form. In finding that the company was but a ‘sham’ and a mere ‘alias’ or ‘agent’ for Mr Salomon, the Court of Appeal read into the statute a “bona fides” requirement at a time when the judiciary could not refer to Parliamentary debates to determine what Parliament intended. When the case went to the House of Lords, Lord Halsbury in a highly literalist judgment dismissing the Court of Appeal decision, upheld what he described as the real existence of a company duly constituted by law and was extremely critical of both individual Court of Appeal judges and their overall approach of examining the motives of those who formed the company.⁵

In the decades leading up to the 1960s the *Salomon* decision firmly embedded itself due to the absence of the possibility, under the then rules of the Supreme Court, of even a future House of Lords overruling a previous decision of the House of Lords, and so the differing judicial views as to the legitimate use of the corporate form lay buried. The seeds of later categories of corporate disregard were emerging in *Gilford Motor Co Ltd*

⁴ *Salomon v Salomon* [1897] AC 22. C. Mitchell, ‘Lifting the Corporate Veil: An Empirical Study’ (1999) 3 Company Financial & Insolvency L Rev 15.

⁵ *Salomon v Salomon* [1897] AC 22 at 33-34. See also E McGaughey, ‘Donoghue v Salomon in the High Court’ (2011) 4 Journal of Personal Injury Law 249.

v Horne,⁶ where a former employee who was bound by a covenant not to solicit customers from his former employers set up a company to do so. The court found that the company was but a front for Mr Horne and issued an injunction. This category would emerge in the 1960s in the case of *Jones v Lipman*⁷ as allowing the courts to disregard the corporation where the company was a “mere façade concealing the true facts”.⁸ Similarly in 1939 in *Smith, Stone & Knight v Birmingham Corp*⁹ the court set out a concept of agency as an exception to the *Salomon* principle that would reappear throughout the Century.

By the late 1960s judicial tensions around older established precedents such as *Salomon* began to emerge in the aftermath of the changes to the rules of the Supreme Court in 1966,¹⁰ whereby the House of Lords could overrule its previous decisions. In 1969 the Court of Appeal in *Littlewoods Mail Order Stores v IRC*¹¹ expressed a clear broad watching brief over the *Salomon* principle indicating its inviolability was no longer assured.

Reflecting the differing views of the Court of Appeal and the House of Lords in *Salomon*, one of the most significant features of the development of the corporate disregard case law over the late 20th and early 21st Centuries is the repeated inability of the judiciary to agree as to the rationale they see as justifying it. In *DHN Food Distributors Ltd v Tower Hamlets*¹² for example, Lord Denning argued that a group of companies was in reality a single economic entity and should be treated as one legal entity. His fellow judges Sachs LJ and Karminski LJ carefully shied away from agreeing that broad single economic entity rationale. Two years later the House of Lords in *Wolfson v Strathclyde Regional Council*¹³ stated that the veil of incorporation would be upheld unless it was a façade. However, in 1985 in *Re a Company*¹⁴ the Court of Appeal again asserted a broader notion of veil lifting:

[i]n our view the cases... show that the court will use its power to pierce the corporate veil if it is necessary to achieve justice irrespective of the legal efficacy of the corporate structure under consideration.¹⁵

⁶ *Gilford Motor Co Ltd v Horne* [1933] Ch. 935.

⁷ *Jones v Lipman* [1962] 1 WLR.

⁸ See also *Re Bugle Press* (1961).

⁹ *Smith, Stone, & Knight Ltd. v Birmingham Corp.* [1939] 4 All ER 116.

¹⁰ *The Practice Statement* [1966] 3 All ER 77.

¹¹ *Littlewoods Mail Order Stores Ltd. v Inland Revenue Commissioners* [1969] 1 WLR 1241. “[t]he doctrine laid down in *Salomon*’s case has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can, and often do, pull off the mask. They look to see what really lies behind.”

¹² *D.H.N. Food Distributors Ltd. v Tower Hamlets London Borough Council* [1976] 32 P & CR 240.

¹³ *Wolfson v Strathclyde Regional Council* [1979] 38 P & CR 521.

¹⁴ *Re a Company* [1985] 1 BCC 99421.

¹⁵ See also *Esso Petroleum Co. Ltd. v Mardon* [1976] 2 W.L.R. 583.

There was, however, a growing disquiet about the uncertainty this back and forth judicial dialogue brought to the concept of corporate personality and limited liability.¹⁶

This led in 1990 to a review of disregard precedent in *Adams v Cape Industries*¹⁷ that attempted to provide a fundamental set of rationale for disregarding the corporate form across all areas of law. The Court of Appeal concluded that it could do so in only three narrow circumstances: where the court is interpreting a statute or a document; where the corporation is a “mere façade” (a la *Jones v Lipman*) and where an agency relationship exists. The court stated with echoes of Lord Halsbury:

[n]either in this class of case nor in any other class of case is it open to this court to disregard the principle of *Salomon v. A. Salomon & Co. Ltd.* [1897] A.C. 22 merely because it considers it just so to do... we do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this manner is inherent in our corporate law.¹⁸

However, despite this strong precedent, consistency seemingly remained elusive,¹⁹ and by 2013 we were back to familiar territory again with the Supreme Court attempting to provide a set of rationales for when corporate disregard should occur.

In *Prest v Petrodel Resources Ltd*²⁰ the case concerned ancillary financial relief following divorce proceedings. The central question in the case was whether Michael Prest was entitled to eight residential properties (one was the matrimonial home) owned by two companies in which he held effective controlling shareholdings. A Supreme Court, unusually made up of seven judges, unanimously concluded that the corporation could not be disregarded in this circumstance given the absence of impropriety. The placing of the properties in the companies was unconnected with the breakdown of the marriage. Instead, they held that the properties of the companies should be transferred to Mrs Prest because

¹⁶ See J Lowry. ‘Lifting the Corporate Veil.’ (1993) *Journal of Business Law and National Dock Labour Board v Pinn and Wheeler Ltd* [1989] BCLC 647.

¹⁷ *Adams v Cape Industries* [1990] Ch 433.

¹⁸ *Adams* p.538 and 544.

¹⁹ See for example *Creasey v Breachwood Motors Ltd* (1993), *Raja v Van Hoogstraten* (2006), *Kremen v Agrest (No. 2)* [2011] 2 F.L.R. 490.

²⁰ *Prest v Petrodel Resources Ltd* [2013] 2 AC 415.

they were held by the companies on a resulting trust for Mr Prest. However, in discussing the disregard issue, agreement on exactly when it might occur escaped the Court. Lord Sumption proposed two underlying principles which he called ‘the concealment principle’ and ‘the evasion principle’ with which Lord Neuberger broadly agreed. ‘Concealment’ in his view did not give rise to piercing of the corporate veil but was rather a looking behind the corporate veil to identify legally relevant facts. ‘Evasion’ as in *Jones v Lipman* did warrant piercing the corporate veil ‘if there is a legal right against the person in control of it which exists independently of the company’s involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement.’²¹

Lady Hale, Lord Walker, Lord Clarke and Lord Mance while agreeing with the resulting trust outcome, with varying degrees of strength, they disagreed as to the extent that it was possible to entirely set out a closed set of principles for corporate disregard. Lady Hale in particular strongly disagreed stating:

I am not sure whether it is possible to classify all of the cases in which the courts have been or should be prepared to disregard the separate legal personality of a company neatly into cases of either concealment or evasion. They may simply be examples of the principle that the individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business.²²

Since *Prest* what has become clear is that Lord Sumption’s principles have become an important working framework for the courts to utilize in corporate disregard cases.²³ In *R v Sale* and *R v McDowell* the Court of Appeal while noting the *obiter* status of Lord Sumption’s view and the differing views of the other Supreme Court Judges went on to use Lord Sumption’s formula. Similarly, the Privy Council decision of Lord Neuberger, in *Persad v Singh*²⁴ utilized Lord Sumption’s view in *Prest* in rejecting an argument a company was simply its controllers “alias” or “front”.

However, as with *Adams* it has not yet led to the clarity sought. In both *Pennyfeathers Ltd v Pennyfeathers Co Ltd*²⁵ and *Wood v Baker* for example in finding a solution apparently based on Lord Sumption’s principles the courts somewhat confusingly failed to distinguish between evasion and concealment. Similarly—and somewhat ironically—given the

²¹ Prest para 28.

²² Prest para 92.

²³ See *Airbus Operations Ltd. v Withey* [2014] EWHC 1126 (QB), *Wood v Baker* [2015] EWHC 2536 (Ch) and *JCA BTA Bank v Abylazov*, 2014 WL 3535498 (2014).

²⁴ *Persad v Singh* [2017] UKPC 32.

²⁵ [2013] EWHC 3530 (Ch).

negative views of *alter ego* as a corporate disregard rational by Lords Sumption and Neuberger in *Prest*,²⁶ the courts difficulties in working with Lord Sumption's principles seems to have propelled a sort of quasi agency and *alter ego* rationale back to prominence. In *R. v Sale*²⁷ the Court of Appeal found that while the evasion principle did not apply, it found, using the concealment principle, that the activities of the company and the defendant were "indivisible". In *R. v McDowell*²⁸ the Court of Appeal more explicitly linked the company and its controller as *alter ego*. In *Clegg v Pache*²⁹ both the High Court and the Court of Appeal without any discussion of the case law authority, instead citing Snell's Equity, utilized *alter ego* as a determining rationale and found that a company was a "mere cloak or alter ego" that justified treating the company's profits and the controllers as one and the same.³⁰

Significantly, Lord Sumption's principles as determining finally when the courts can disregard the corporate veil has been questioned by the courts themselves. In *Gramsci Shipping Corp v Lembergs*³¹ the Court of Appeal considered the case to have an uncertain precedential value given the differing views of the Supreme Court Judges considering that '[a]bsent a principle, further development of the law will be difficult for the courts because development of common law and equity is incremental and often by analogical reasoning.'³² In 2017 the Court of Appeal in *IBM United Kingdom Holdings Ltd v Dalgleish*, as it had in *Gramsci*, again emphasized that, given the differing views of the Supreme Court judges, *Prest* had not settled the matter of when the courts can engage in corporate disregard.³³

Perhaps the differential views on the finality of Lord Sumption's principles is best captured in the recent opposing approaches of the High Court and the Court of Appeal in *Rosendale BC v Hurstwood Properties (A) Ltd*. In the High Court Judge Hodge considered the status of Lord Sumption's formula and in response to the argument that the veil should be pierced concluded:

²⁶ Paras 23,31 and 68.

²⁷ [2013] EWCA Crim 1306; [2014] 1 W.L.R. 663.

²⁸ [2015] EWCA Crim 173; [2015] Crim. L.R. 623.

²⁹ [2017] EWCA Civ 256.

³⁰ [2017] EWCA Civ 256 para 17. High Court Transcript HC11CO1402 para 90 (i). For a wider consideration of these developments see G Allan "To pierce or not to pierce? A doctrinal reappraisal of judicial responses to improper exploitation of the corporate form" J.B.L. 2018, 7, 559-583 at 576 and T Z Xing, "The New Era of Corporate Veil-piercing" (2016) 28 S. Ac. L.J. 209.

³¹ *Antonio Gramsci Shipping Corporation v Recoletos Ltd (Lembergs)* [2013] EWCA Civ 730.

³² Indeed in *Clegg v Pache* (Deceased), 2017 WL 01831355 (2017) both the High Court and Court of Appeal ignore the disapproval of *alter ego* by Lords Sumption [para 23] and Neuberger [para 68] and utilize *alter ego* to rationalise veil lifting.

³³ [2018] I.R.L.R. 4 see also *Akzo Nobel NV v Competition Commission* [2013] CAT 17.

In my judgment, the Claimant does have an arguable case on this particular ground. The doctrine of piercing the corporate veil is a developing area of jurisprudence. I am not satisfied that Lord Sumption's judgment was intended as an exhaustive statement of the circumstances in which the court might disregard the corporate veil.³⁴

In the Court of Appeal Lord Justice Richards, while declining to disregard the corporate veil and in a thoughtful judgment, recognized the different views of the Supreme Court Judges in *Prest* and that other disregard categories were possible, albeit in his view rare.³⁵ As Allan examining the state of the post-*Prest* case law commented “[i]t seems that the radical approach taken in *Prest* has neither introduced doctrinal coherence nor checked the profligate use of metaphors to justify ignoring the corporate veil.”³⁶

B. *Academic Treatments*

The fragmented nature of the doctrine over time is also reflected in the scholarship on corporate disregard. This may of course be because scholars find getting to grips with an area that has such clouded rationales equally as difficult as the judiciary. Important scholarship in the area is often found in what are in effect extended case notes. The best examples of this have served to punctuate major developments and flag future doctrinal paths that are sometimes taken up by the judiciary.³⁷ Another distinct approach within corporate disregard scholarship are historical papers. Unlike the extended case notes, this form of scholarship often focuses on only one aspect of corporate disregard.³⁸

The post-*Adams* period has also seen the emergence or re-emergence of a key type of academic commentary, the antithesis of the idea of their being a rational judicial approach to corporate disregard, in what could be

³⁴ *Rossendale BC v Hurstwood Properties (A) Ltd*, 2017 WL 07305981 (2017) Para 133.

³⁵ *Rossendale BC v Hurstwood Properties (A) Ltd*, 2019 WL 01065746 (2019) Para 42.

³⁶ G Allan “To pierce or not to pierce? A doctrinal reappraisal of judicial responses to improper exploitation of the corporate form” J.B.L. 2018, 7, 559-583 at 576.

³⁷ See, for example, O Kahn-Freund. “Corporate Entity.” *Modern Law Review* no. 3 (1940): 226–28 and Lowry, John. “Lifting the Corporate Veil.” *Journal of Business Law* no. January (1993): 41-42. Other good examples of this type of scholarship are Armour, John, and Simon Deakin. “Recent Case. Commentary: The Rover Case (2) -Bargaining in the Shadow of Tupe.” *Industrial Law Journal* 29, no. 4 (2000): 395-402. Friedman, Paul, and Nick Wilcox. “Piercing the Corporate Veil.” *New Law Journal* 56, (2006).

³⁸ J Payne. “Lifting the Corporate Veil: A Reassessment of the Fraud Exception.” *Cambridge Law Journal* 56, no. 2 (1997): 284-90, R Austin, *Corporate Groups*, in Ross Grantham and Charles Rickett, (Eds) *Corporate Personality in the 20th Century* (Oxford: Hart Publishing, 1998), pp. 71 -89. N Hawke and P Hargreaves. “Corporate Liability: Smoke and Mirrors.” *International Company and Commercial Law Review* 14, no. 2 (2003): 75-82; Linklater, Lisa. “Piercing the Corporate Veil -the Never Ending Story.” *Company Lawyer* 27, no. 3 (2006): 65-66.

described as the "mistake" scholarship.³⁹ In general this literature views the House of Lords decision in *Salomon as ab initio* incorrect. From Kahn–Freund's 1944 description of *Salomon* as a 'calamitous' decision,⁴⁰ through Ireland's finding of 'absurdity' and 'ossification',⁴¹ to Moore's 'temple built on faulty foundations',⁴² this category has been an important and persistent part of the corporate disregard literature over time.⁴³

Perhaps the most challenging analytical scholarly approach strives to find or argue for a single rationale or set of rationales within the corporate disregard scholarship. This approach seeks to argue that, despite the doctrine's vaguery, there is or should be a sizable thread or threads of judicial reason running through the case law that essentially explains everything. This type of scholarship took time to build as early work on corporate disregard tended, because of the lack of case law, to focus on statutory inroads into the *Salomon* principle.⁴⁴ By the 1960s, however, enough case law on corporate disregard had built up for Samuels to consider that though separate legal personality has been a fundamental principle of company law, the courts have occasionally 'lifted', 'parted', 'torn', 'rent', 'breached', or 'pierced' the corporate veil.⁴⁵ By the end of that decade Pickering observed that exceptions to corporate personality had begun to be described by commentators as 'lifting the veil' although the phrase was not commonly used by the judiciary to describe their actions at that point.⁴⁶ In the mid-1970s Schmitthoff claimed that the judicial qualifications were so broad that the *Salomon* decision had ceased to be the most important case in company law.⁴⁷ In 1986 Rixon concluded that the Court of Appeal were but 'a short step to the proposition that the courts may disregard *Salomon's* case whenever it is just and equitable to do that'.⁴⁸

³⁹ M Moore. "A Temple Built on Faulty Foundations': Piercing the Corporate Veil and the Legacy of *Salomon v. Salomon*." *Journal of Business Law* no. March (2006): 203.

⁴⁰ See O Kahn–Freund, Otto, *supra* n.54-66.

⁴¹ P Ireland. "The Rise of the Limited Liability Company." *International Journal of the Sociology of Law*, 12 (1984): 239-260. P Ireland. (1999) *Company Law and the Myth of Shareholder Ownership*. *Modern Law Review*, 62 (1). pp. 32-57.

⁴² M Moore, *supra* n.40, 180-203.

⁴³ See also P Muchlinski. "Holding Multinationals to Account: Recent Developments in English Litigation and the Company Law Review." *Company Lawyer* 23, no. 6 (2002): 168–79 and Collins, Hugh. "Recent Cases. Individual Employment Law. Associated Employers." *Industrial Law Journal* 18, (1989): 109–12.

⁴⁴ C Parry. 'The Trading with the Enemy Act and the Definition of the Enemy.' *Modern Law Review* 4, no. 3 (1941): 161-82.

⁴⁵ See Samuels, n.__, 107-17.

⁴⁶ M Pickering. "The Company as a Separate Legal Entity." *Modern Law Review* 31, no. 5 (1968): 481-511.

⁴⁷ C Schmitthoff. 'Salomon in the Shadow.' (1976) *Journal of Business Law* 305-12. See also Powles, 'The "See-Through" Corporate Veil' (1977) 40 *The Modern Law Review* 339 and S Block. 'The Client Who Behaves as Though *Salomon's* Case Was Wrongly Decided.' (1978) 5 *International Business Lawyer* 119 -24.

⁴⁸ F G Rixon. 'Lifting the Veil between Holding and Subsidiary Companies.' (1986) *Law Quarterly Review* 415. For a comparative view of the case law in this period see J M

By the late 1980s a distinct sense had emerged within this scholarship that the judiciary had lost their way, and attempts began in earnest to provide solutions.⁴⁹ Ziegler and Gallagher set about classifying the various decisions and suggested subsuming the categories traditionally proposed for lifting the veil (agency, fraud, avoidance of existing obligations) into the one broad category—‘prevention of injustice’.⁵⁰ Ottolenghi similarly examined the disregard case law and seemingly found clear categorisations such as: ‘peeping’, where the veil is lifted to get member information; ‘penetrating’, where the veil is disregarded and liability is attributed to the members; ‘extending’, where a group of companies is treated as one legal entity and; ‘ignoring’, where the company is not recognised at all.⁵¹

To a large extent this classification literature was narrowed by the important Court of Appeal decision in *Adams v Cape Industries*, which itself forms a crossover part of this literature both as a response to academic criticism and its ability to somehow find from the precedent three clear legitimate rationale (in its view) where the courts can disregard the corporate form (Agency, Façade/Sham/Shell and interpreting a Contract/Statute). *Prest* at least in terms of Lord Sumption’s principles similarly links into this core thread of rationale scholarship.

As we have already touched upon earlier, within the academic literature the wider status of *Prest* remains controversial. While some have welcomed the attempt to put some discipline on the area of corporate disregard and others view the increased certainty of Lord Sumption’s principles as a positive development,⁵² the majority response has been critical for a range of reasons. A minority would have liked to see the doctrine eliminated entirely⁵³ or have attacked the generality of attempting to use a private law solution across all areas of law.⁵⁴ Some others, reflecting the judicial views in the post-*Prest* case law, have questioned the status of Lord Sumption’s principles as defining the scope of corporate disregard.⁵⁵

A significant group both commenting in the immediate aftermath of and since *Prest* have pointed to the difficulty the courts have had applying

Dobson. ‘Lifting the Veil in Four Countries: The Law of Argentina, England, France and the United States.’ (1986) 35 *International & Comparative Law Quarterly* 839-63.

⁴⁹ Lord Wedderburn, ‘Multinationals and The Antiquities of Company Law’ (1984) 47 *MLR* 87.

⁵⁰ P Ziegler and L Gallagher. ‘Lifting the Corporate Veil in the Pursuit of Justice.’ (1990) *Journal of Business Law*.

⁵¹ S Ottolenghi. “From Peeping Behind the Corporate Veil, to Ignoring It Completely.” (1990) 53 *The Modern Law Review* 338 -53.

⁵² H Tjio “Lifting the Veil of Piercing the Veil” (2014) LMCLQ 19.

⁵³ R Matthews “Clarification of the Doctrine of Piercing the Corporate Veil” (2013) 28 *JIBLR* 516.

⁵⁴ R George, ‘The Veil of Incorporation and Post-Divorce Financial Remedies’ (2014) 130 *Law Quarterly Review*. 373.

⁵⁵ G Allan “To pierce or not to pierce? A doctrinal reappraisal of judicial responses to improper exploitation of the corporate form” J.B.L. 2018, 7, 559-583 A Schall, “The New Law of Piercing the Corporate Veil in the UK” (2016) ECFR 2016, 549–574.

Lord Sumption's principles objectively and consistently given the overlap between them in reality and concerned by the confusion emerging advocate a complete revisiting of the issue by the judiciary.⁵⁶ As Xing notes:

The application of the concealment and evasion principles forming the bulwark of Lord Sumption's analysis has been, on reflection, significantly more difficult. While some decisions can be criticised for failing to apply these principles more precisely and rigorously, other cases which attempt to do so demonstrate more fundamental problems with the framework in the first place; namely, that the distinctions between the concepts are not sustainable, and that they in any event may not be sufficiently robust to accommodate the various ways in which corporate controllers may harness corporate vehicles to a range of misuses inconsistent with the purposes upon which the privilege of incorporation is granted.⁵⁷

Overall it would seem that repeated traditional judicial attempts to draw a line in the sand as to a doctrine of corporate disregard have repeatedly proved problematic. Our aim in this paper is to examine judicial rationales in this area within an empirical framework to determine how instrumental they were to the outcome. We believe this can provide a broader more evidence-based overview of instability in the area that can complement more traditional judicial approaches to developing the law in this area.

III. METHODOLOGY

A. *Conceptual Framework*

The network of published decisions that form the core of our common law has been described as a "gold mine for scientific work."⁵⁸ Foreshadowed by Oliver Wendell Holmes,⁵⁹ scholars have deployed a wide variety of techniques to extract and analyse data from judicial opinions. Quite often these techniques have origins outside of law, and their importation can generate challenges that are symptomatic of such

⁵⁶ F Rose, "Raising the corporate sail" [2013] LMCLQ 566, B. Hannigan, "Wedded to Salomon: Evasion, Concealment and Confusion on Piercing the Veil of the One-Man Company" (2013) 50 I.J. 11, R Grantham, "The Corporate Veil – An Ingenious Device" (2013) 32 U Queensland LJ 311, P Woan Lee, "The Enigma of Veil Piercing" (2015) 26 I.C.C.L.R. 28, T Z Xing, "The New Era of Corporate Veil-piercing" (2016) 28 S. Ac. L.J. 209 and A Schall above.

⁵⁷ T Z Xing above 240.

⁵⁸ H Oliphant. 'A Return to Stare Decisis.' (1928) 14 *A.B.A. J.* 161.

⁵⁹ O W Holmes. 'The Path of the Law.' (1897) 10 *Harvard Law Review* 469.

interdisciplinary endeavours.⁶⁰ Other kinds of challenges emanate from the judicial opinions themselves. As Karl Llewellyn cautiously prescribed, “finding out what the judges *say* is but the beginning of your task. You will have to take what they say and compare it with what they *do*.”⁶¹ The problem is not simply a matter of interpretation, because “[w]e have no way of knowing exactly what the facts were that were in sight of the judges who have participated in preparing opinions, nor do we know exactly what was in their minds and hearts.”⁶² Moreover, even the simplest dispute affords some measure of “weak” discretion to a judge concerning the application of the relevant law to a set of facts.⁶³ The exercise of such discretion typically transpires in a manner that is beyond the ken of litigants or the public, prompting some to contend that “the judge’s art, when greatly practiced, is far too subtle to be measured by any existing behavioural technique.”⁶⁴ Others have even contended that judicial decisions are simply a quasi-rationalised discretionary story.⁶⁵ While one may question whether such a broad, cynical acknowledgement is warranted, it would be naïve to believe that aspects of a case are never omitted or selectively presented within an opinion to support its ultimate holding.

Nevertheless, this type of data from judicial opinions can be valuable. Mark Hall and Ronald Wright, for instance, have asserted that content analysis

is better suited to studying judicial reasoning itself, retrospectively. Scholars can use the method to learn more, for instance, about how results are justified . . . [and] is perhaps more relevant to...seeking a measurable understanding of substantive law or the legal process.⁶⁶

Classical content analysis typically involves the coding and counting of frequency with which certain phenomena appear in documents.⁶⁷ For

⁶⁰ See A L Tyree. ‘Fact Content Analysis of Case Law: Methods and Limitations.’ (1981) 22 *Jurimetrics* 1-3.

⁶¹ K N Llewellyn, *The Bramble Bush: On Our Law and Its Study* (4th ed. 1973): 14.

⁶² R C Lawlor. ‘Fact Content Analysis of Judicial Opinions.’ (1968) 8 *Jurimetrics* 107-08.

⁶³ R Dworkin, *Taking Rights Seriously* (1977): 31-33.

⁶⁴ W Mendelson. ‘The Neo-Behavioral Approach to the Judicial Process: A Critique.’ (1963) 57 *American Political Science Review* 602-03.

⁶⁵ M A Hall and R F Wright. ‘Systematic Content Analysis of Judicial Opinions.’ (2008) 96 *California Law Review* 100 (quoting A Juliano and S J Schwab. ‘The Sweep of Sexual Harassment Cases.’ (2001) 86 *Cornell Law Review* 558-59). “[t]here is no reason to expect that . . . opinions should provide complete, objective, and result-neutral statements of all the facts in each case. Instead, there is every reason to think just the opposite. Therefore, content analysts must acknowledge that a “judicial opinion is the judge’s story justifying the judgment . . .”

⁶⁶ *Id.* at 98.

⁶⁷ L Webley. ‘Qualitative Approaches to Empirical Legal Research.’ *The Oxford Handbook of Empirical Legal Research* (Peter Cane & Herbert M. Kritzer, eds., 2010): 941.

instance, content analysis of judicial opinions can reveal patterns that may evince whether the law has been applied consistently, judicial discretion has been exercised impactfully, uncertainly or some other aspect about adjudication.

B. *Rationale Analyses*

Within the rapidly expanding universe of empirical legal studies corporate disregard has a singular place. Nowhere has there been more sustained examination of a remedial measure and how it has been applied by courts around the world. This perhaps can be attributed to the doctrine itself, which courts have seemingly struggled to articulate in a clear and consistent manner. In a similar fashion academics have experimented with various ways to examine corporate disregard, and specifically with respect to the rationales that courts have proffered as justification for their ultimate holdings.

The path to all empirical studies of corporate disregard begins with Robert Thompson's analysis of American cases.⁶⁸ The overall results and parameters of his path-breaking work have been canvassed quite thoroughly, but far less attention has been directed to his work compiling the rationales behind the decisions. From an examination of prior research of the fragmented doctrine as well as his own dataset, Thompson created a list of 85 possible rationales, which he organised into the following categories:

- undercapitalization;
- failure to follow corporate formalities;
- overlap of corporate records, functions or personnel;
- misrepresentation;
- shareholder domination;
- intertwining and lack of substantive separation;
- use of the conclusory terms "alter ego" and "instrumentality";
- the general ground of fairness;
- assumption of risk;
- refusal to let a corporation pierce itself;
- statutory policy.⁶⁹

Data then were compiled on the number of cases in which a court mentioned either the absence or presence of each factor, as well as the frequency with which that mention correlated with an ultimate decision whether or not to disregard the corporate form.⁷⁰ This same approach has

⁶⁸ R B Thompson. 'Piercing the Corporate Veil: An Empirical Study.' (1991) 76 *Cornell Law Review* 1036.

⁶⁹ *Id.* at 1045-46.

⁷⁰ *Id.* at 1063-64.

been adopted by other studies of American⁷¹ and Australian⁷² corporate disregard cases.

While revealing in numerous respects, the frequency data also have limits. For instance, in his own study of English corporate disregard cases, Charles Mitchell elected not to compile any data on judicial rationales.⁷³ According to Mitchell, in disregard cases, rationales are mentioned primarily to reinforce “the courts’ own disinclination to describe a set of principles by reference to which their decisions on the point should be taken,” leaving adjudication of corporate disregard claims to the mercy and whims of judicial discretion.⁷⁴ Moreover, the court’s decision may rest on multiple grounds, which may vary in their weight and whose effects, therefore, can be difficult to disentangle; as Fred McChesney has noted, “[s]imply registering the presence or absence of certain factors in the cases cannot disclose the relative importance of each factor individually.”⁷⁵

One option to redress these concerns is to examine all the various rationales with multiple regression analysis. John Matheson, for instance, has used logistic regression to analyse thousands of American veil-piercing cases.⁷⁶ But the technique may not be suitable when, as is the case here, the data pool is considerably smaller; moreover, this sort of statistical analysis still can be limited if the underlying data tabulate mere mentions of factors, rather than when a particular factor was truly instrumental to the court’s ultimate decision.

Another strategy that has been attempted is algorithmic text analysis. According to Jonathan Macey and Joshua Mitts, an algorithm can be used to identify the rationales that best predict judicial outcomes.⁷⁷ According to them, the use of such automated methods avoids the “substantial subjectivity and arbitrariness” of manual coding, which involves elements of judgment about how certain data should be classified and entered,⁷⁸ and instead represents a “more replicable and objective [approach] than prior empirical studies on veil piercing.”⁷⁹ This of course misses the point that statistical algorithms are the product of human design and coding and

⁷¹ See J H Matheson. ‘The Modern Law of Corporate Groups: An Empirical Study of Piercing the Corporate Veil in the Parent-Subsidiary Context.’ (2009) 87 *North Carolina Law Review* 1112-13. J H Matheson. ‘Why Courts Pierce: An Empirical Study of Piercing the Corporate Veil.’ (2010) 7 *Berkeley Business J.* 12-13.

⁷² IM Ramsay and DB Noakes, ‘Piercing the Corporate Veil in Australia’ (2001) 19 *C&SLJ* 250.

⁷³ E-mail from Charles Mitchell, (on file with author).

⁷⁴ Mitchell, *supra* note __, at 15.

⁷⁵ F S McChesney. ‘Doctrinal Analysis and Statistical Modeling in Law: The Case of Defective Incorporation.’ (1993) 71 *Washington University Law Quarterly* 515-19.

⁷⁶ See *supra* note 39.

⁷⁷ J Macey and J Mitts. ‘Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil.’ (2014) 100 *Cornell Law Review* 113.

⁷⁸ *Id.* at 112.

⁷⁹ *Id.* at 140.

simply automate the decisions of Macey and Mitts.⁸⁰ Using technology does not produce a neutral truth.⁸¹

Additionally, their algorithmic study represents only a slice of the entire universe of American disregard cases, in particular, because Macey and Mitts acknowledge that they excluded conclusory metaphorical rationales such as *alter ego*.⁸² However sliced, Macey and Mitts' database is constructed differently than those within other American content studies, particularly those that did not use any sampling techniques and instead thoroughly compiled each and every case within a defined timespan.⁸³

And these differences matter. As many commentators—including Macey and Mitts themselves—have observed, the domain of corporate disregard is notoriously replete with conclusory, metaphorical language that has become part of the doctrinal tests applied by courts.⁸⁴ Precisely because they are proxies for deeper rationales, these metaphors should, in our view, be part of any examination of judicial reasoning; and, indeed, such terms comprise a significant part of the datasets of other common law empirical veil-piercing studies. The decision by Macey and Mitts to “filter out” such phrases at the outset both illustrates the point that technological neutrality was not present and generates a dataset that probably omits large swaths of relevant cases and likely precludes any meaningful comparison of results with other studies.⁸⁵

C. *Our Study*

We have taken a more intensive approach towards analysing judicial rationales. The results here are filtered from an initial data set of 909 cases down to a final dataset of 213 UK corporate disregard cases ranging from 1885 up to and including 2014.⁸⁶ The cases come from Westlaw,⁸⁷ LexisNexis,⁸⁸ various print sources, and Charles Mitchell's 1999 English study.⁸⁹ In drawing the cases from the online sources we used four search

⁸⁰ M Broussard (2018) *Artificial Unintelligence*, MIT Press pages 1-39.

⁸¹ Dignam, Alan J., *Artificial Intelligence: The Very Human Dangers of Dysfunctional Design and Autocratic Corporate Governance* (May 3, 2019). Queen Mary School of Law Legal Studies Research Paper No. 314/2019. Available at SSRN: <https://ssrn.com/abstract=3382342>.

⁸² *Id.* at 147-48.

⁸³ *See, e.g.*, Thompson, *supra* n.69.

⁸⁴ D Millon. 'The Still-Elusive Quest to Make Sense of Veil-Piercing.' (2010) 89 *Texas Law Review* *See Also* 20, 29. “[t]he metaphorical factors are notoriously uninformative. Thus, for example, some cases say that if a corporation is a mere “alter ego” of its shareholder it is a basis for piercing.... Metaphors . . . serve as little more than window dressing for fairness or policy considerations that are rarely articulated clearly”

⁸⁵ *Cf.* Hall & Wright, *supra* note __, at 97.

⁸⁶ Searches by decade begin in 1885. Cases begin with *Farrar v Farrars Ltd* [1888] 40 Ch D 395.

⁸⁷ 'UK Reports All' database, beginning 1865.

⁸⁸ 'UK Cases Combined Courts' database, beginning 1558.

⁸⁹ *See* C. Mitchell, *supra* n.__, 24-28.

phrases: ‘disregard! /s (entity entities)’, ‘pierc! /s veil’, ‘lift! /s veil’, and ‘Salomon /s Salomon.’⁹⁰

Cases were then examined by both authors separately and together for relevance and only cases with a meaningful disregard outcome were included in the final data set. Within that filtering, preliminary interlocutory matters or jurisdiction issues were not included where they did not reflect reliable outcomes or reasoning.⁹¹ Similarly, cases where corporate disregard was potentially engaged but the judge eliminated it from consideration were not included.⁹² Reverse-piercing,⁹³ successor liability,⁹⁴ and transfers within bankruptcy,⁹⁵ were also eliminated despite their doctrinal links.

The cases within the final dataset then were coded manually by each author separately and agreed together. A range of factual information about each case was collected, such as the year of decision and whether the corporate form was disregarded. In cases where a court applied separate analysis to different co-defendant corporations or individuals, we created separate entries for the same opinion,⁹⁶ so there are 213 cases within the data set but 216 observations. Information about the specific Court, division, and subdivision were compiled and whether the decision was trial, intermediate appellate, or supreme level.

Information was also collected about the substantive claim as to whether a corporate disregard request lay in contract, criminal, fraud/deception, statutory, or tort law. Where multiple substantive claims were present, any of which may relate to a court’s ultimate disposition, we recorded all of the substantive claims within a case on a non-exclusive basis.

As we noted earlier, the area of corporate disregard has over its history been permeated by sometimes extraordinary conclusory, metaphorical terms, such as lifting, peeping, and piercing, which have been used at times and continue to be used, even after Lord Sumption’s attempts in *Prest* to introduce a more exact phraseology, by the judiciary in confusing and obfuscating ways.⁹⁷ Interpreting the instrumental meaning of a rationale within each case is therefore vital. According to David Millon,

[i]f the asserted rationales are actually uninformative, the real challenge is to figure out what kinds of acts really motivate courts to pierce the corporate veil. This would

⁹⁰ The exclamation mark within our search terms is a wildcard that nets different permutations of a term.

⁹¹ But see C. Mitchell, *supra* n. ___, 24 table 8.

⁹² For example *Chandler v Cape Plc* [2012] 1 WLR 3111.

⁹³ See, *In re H. R. Harmer Ltd* [1959] 3 All ER 689 (Q.B.).

⁹⁴ See, *Davis v Elsby Bros* [1959] 1 WLR 170.

⁹⁵ See, *Gonville’s Trustee v Patent Caramel Co* [1912] 1 KB 599.

⁹⁶ See, for example, *Yukong Lines Ltd of Korea v Rendsburg Investments Corp.* [1998] BCC 870, which involves two different types of shareholders.

⁹⁷ See Lord Sumption’s view on this in *Petrodel Resources Ltd v Prest* [2013] 2 AC 415, 8. For more recent inexact usages see *R v Sale* Para 22 and *R v McDowell* Paras 35 and 40.

require a case-by-case reading of the facts of each piercing decision in order to discern just what it is that triggers the court's belief (or perhaps just intuition) that the corporation's shareholders have acted improperly.⁹⁸

This is the approach that has been taken in one study of American veil-piercing cases,⁹⁹ and is the one that we have used here.

Each case within our dataset was read carefully to determine the rationales that appeared instrumental to a court's ultimate decision whether or not to disregard the corporate form. This encompasses all instances in which the court noted that evidence, a factor, or some other kind of justification was absent or present; and when multiple instrumental rationales were present within a case, they were all recorded. We recorded a total of fourteen categories of instrumental rationales, selected on the basis of appearance within our UK cases: Agency, Alter Ego, Assumption of Risk, Commingling, Control/Domination, Deception, Façade/Sham/Shell, Informalities, Injustice/Unfairness, Instrumentality, Siphoning of Funds, Statutory Interpretation, Undercapitalization, and Other. For certain rationales, subcategories were used. Commingling was divided into whether it involved assets, employees/officers, records/taxes. Deception was divided into whether it concerned Fraud/Deceit, Assets, or the Identity of the shareholder.

Unlike Thompson's and Matheson's studies, we did not just collect data on whether a rationale was merely mentioned within a corporate disregard opinion. For a rationale to be included in our data set it had to be instrumental. And, unlike Macey and Mitts' study, we did not look for specific textual phrases or use any kind of algorithmic approach. Instead, we did what lawyers seeking to understand the law of corporate disregard would do: read opinions carefully, for this study a lot of opinions, and assess whether reasons cited by a court are instrumental to the corporate disregard outcome. However, as discussed earlier there is no way to discern entirely whether the publicly articulated rationales cited by a court truly are the driving instrumental reasons for the outcome. Metaphors in particular are by their very nature chosen to provide a shape for an explanation but without providing exact detail. As such, the disregard rationales we capture may operate similarly to a Rorschach test whereby articulated rationales reveal information about judicial deliberation, whether conscious or unconscious; for instance, recurring specific rationales, such as deception, may indicate preferred evidence, whereas conclusory metaphors, such as alter ego, may indicate a lack of evidence or complete evidence for the ultimate decision.

There are, of course, other limitations to our study's design. Because our dataset concerns only judicial opinions, our results do not capture the dynamics of cases that never reached final disposition, and so the portrait

⁹⁸ Millon, *supra* n.85, at 23.

⁹⁹ P Oh. 'Veil-Piercing.' (2010) 89 *Texas Law Review* 81.

is but a part of the overall population of corporate disregard litigation. This issue is not just present with empirical study of case law but also traditional black letter analysis. Moreover, the cases within our dataset may be susceptible to selection bias,¹⁰⁰ and so we may be presenting results involving issues, litigants, and resources that might not be representative of all potential disputes. But, without access to any non-filed or settled matters, these publicly available cases are currently the best means for acquiring broad evidential insight into judicial reasoning that will assist our understanding and development of the area.

IV. RESULTS

The results presented here should be read with great care. Unlike other studies, the frequency data should not be interpreted as reporting simply the total number of cases in which a rationale was mentioned by a court in our dataset; rather, the frequency data reflect the number of times in which a rationale was deemed to be *instrumental*—either in its articulated absence or presence within a case— to an ultimate decision whether or not to disregard the corporate form. Further, the disregard rate provided for each rationale should not be compared to the overall corporate disregard rate of 35.65% for our entire case dataset; the disregard rate for each rationale instead reflects its propensity or weight towards whether a corporate disregard claim was successful or not. For example in Table 1A below, the courts articulated Façade/Sham/Shell 69 times as a rationale that was instrumental to an outcome. The disregard rate for Façade/Sham/Shell of 27.54% means that it was articulated by the court as instrumental in disregarding the corporate form in only 27.54% of cases and that conversely in 72.46% of cases the court articulated that its absence was instrumental to a no disregard outcome that upheld the corporate form.

Table 1A presents data on the frequency and disregard rate for each rationale within our UK dataset, with disregard rates in excess of 50.00% appearing in bold.

¹⁰⁰ See G. L. Priest and B. Klein ‘The Selection of Disputes for Litigation’ (1984) 13 J Legal Stud 1.

Table 1A. Frequency and Disregard Rate by Rationale¹⁰¹

Rationale	<i>n</i>	Disregard Rate
Agency	20	30.00%
Alter Ego	17	58.82%
Assumption of Risk	2	0.00%
Commingleing	14	64.29%
Assets	12	58.33%
Employees/Officers	3	100.00%
Records/Taxes	3	66.67%
Control/Domination	51	54.90%
Deception	43	32.56%
Fraud/Deceit	30	26.67%
Assets	3	33.33%
Identity	11	45.45%
Façade/Sham/Shell	69	27.54%
Informalities	1	100.00%
Injustice/Unfairness	15	46.67%
Instrumentality ¹⁰²	12	66.67%
Siphoning of Funds	10	60.00%
Statutory Interpretation	35	42.86%
Undercapitalization	3	100.00%
Other	36	25.00%

Façade/Sham/Shell is the rationale that was instrumental in the largest number of cases by a significant margin; this is hardly a surprise, given that it is one of the most clearly and consistently articulated categories for corporate disregard over the past century, and is one of the categorical rationales authorised by the *Adams* decision.¹⁰³ Interestingly, the rationale also features a low 27.54% disregard rate. That rate is the lowest among any of the rationales except for the Other category, which contains very diffuse rationales that resist generalisation.¹⁰⁴ This would suggest that the focus on Façade/Sham/Shell as a problematic rationale in *Prest* was misplaced as although it has a high frequency in the case law it is distinguished by its low rate of disregard indicating a rationale well policed by the judiciary.

Despite its apparent diminution in the *Adams* case, Injustice has persistence within the data and its 46.67% rate suggests that while it is

¹⁰¹ The frequency of rationales may differ than that of sub-category rationales, because the presence of multiple sub-category rationale within a case were recorded as only one instance of that rationale being instrumental to the court's decision whether to disregard the corporate form.

¹⁰² Instrumentality refers to a rationale expressed regarding the corporate form as an "conduit" or "vehicle," or some other means for perpetuating a wrong. The common thread among this rationale revolves around the use of a murky instrumental metaphor that summarily refers to intentional mis-use of the corporate form.

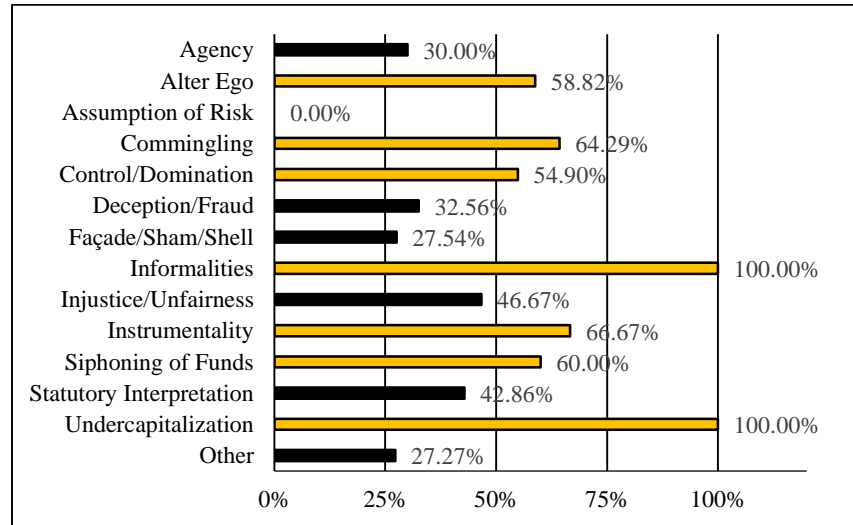
¹⁰³ See *Gilford Motor Co Ltd v Horne* [1933] Ch. 935; *Jones v Lipman* [1962] 1 WLR 832; *Prest v Petrodel* [2013]. See also *infra* Fig. 2A.

¹⁰⁴ See *infra* Tbl. 1A.

uncertainly adjudicated it is not the arbitrary get out of (corporate disregard) jail card suggested in the literature, but rather more finely balanced and uncertain within the case law.¹⁰⁵ Indeed in *Prest Lady Hale's* broad concept of “unconscionable advantage” seems to reflect this continuing stream of judicial rationale.¹⁰⁶ Whether its presence is as concerning as the academic and judicial literature suggests is questionable given its low frequency within our data.

Breaking the data down further, Figure 1 below depicts the disregard rate for each rationale, with the black bars indicating rates below 50.00%, that is, skewing towards the rationale's absence justifying a rejection of the corporate disregard request. Only three other rationales feature disregard rates comparable to that of Façade/Sham/Shell: Agency (30.00%), Assumption of Risk (0.00%), and Deception (32.56%).

FIGURE 1. DISREGARD RATE BY RATIONALE



Assumption of Risk may be discounted on the basis of its infrequency, but the other rationales—along with Façade/Sham/Shell—are commonly mentioned by courts to be circumstances when disregard of the corporate form could occur. For example an overall disregard rate for a rationale that leans toward 0.00% suggests a tendency that the rationale's absence should result in no disregard; and when the rationale leans towards 100%, that suggests a high, but not absolute, degree of judicial consensus that the presence of that rationale will result in disregard. The low disregard rates for this cluster of rationale indicate that their absence from a case frequently results in preservation of the corporate form. Put differently, the data suggest that Agency, Deception and Façade/Sham/Shell are

¹⁰⁵ See F G Rixon. ‘Lifting the Veil between Holding and Subsidiary Companies.’ (1986) *Law Quarterly Review* 415 and Lowry, John. “Lifting the Corporate Veil.” *Journal of Business Law* January (1993): 41-42.

¹⁰⁶ *Prest* para 92.

considered essential elements in a significant number of corporate disregard requests.

If we take a macro view of the rates in terms of judicial consensus then within the data a 0-40% disregard rate indicates a fair degree of judicial consensus as to how that rationale is adjudicated, 41-60% indicates a degree of uncertain adjudication and 61%-100% again indicates a degree of consensus in adjudication. Eliminating rationales with low numbers such as Undercapitalisation (3), Informalities (1) and Assumption of risk (2) leaves 11 rationales with meaningful frequency within the data. Overall in terms of their certainty of adjudication matters look finely balanced with 6 rationales in the certain range and 5 in the uncertain range. Interestingly of the 6 rationales in the certain range 4 tilt towards upholding the corporate form and 2 towards a disregard outcome in terms of their rates. This would seem to accord with the overall picture of uncertainty within the wider academic and judicial commentaries.

However, dividing the rationales by numerical frequency yields a different picture. We organised the 11 remaining rationales into a spectrum of low frequency (0-19), mid-frequency (20-39), and high frequency (40+) rationales. From that breakdown three high frequency rationales are present, Control/Domination, Deception and Façade/Sham/Shell. Deception and Façade/Sham/Shell have low rates and therefore a high degree of certainty and judicial consensus as to the overall direction of adjudication – no disregard. Control/Domination is the only high frequency rationale that has an overall uncertain judicial consensus as to its adjudication although as we will observe below Deception is uncertainly adjudicated at the Intermediate Appeal level. In percentage terms 68.71% of the time a high frequency rationale is instrumental to an outcome it is within the certain range of judicial adjudication and strongly tilts towards a no-disregard outcome. The three categories in the mid frequency range, Statutory Interpretation, Agency and Other similarly have two with low rates indicating judicial consensus and one, Statutory Interpretation, is uncertain but only just. Again within the mid-frequency we can observe that in percentage terms 61.53% of the time a mid frequency rationale is instrumental to an outcome, it is within the certain range of judicial adjudication and strongly tilts towards a no-disregard outcome. Within the five low frequency rationales of Alter Ego, Comingling, Injustice, Instrumentality, and Siphoning only two, Comingling and Instrumentality, have rates that indicate a degree of certainty of judicial adjudication. The other three have rates in the uncertain range. In percentage terms where a low frequency rationale is instrumental to an outcome, it is within the certain range of judicial adjudication only 38.23% of the time and in a very different pattern to the mid and high frequency rationales tilts towards a disregard outcome. Viewed as a whole this is not a picture of uncertainty of adjudication or direction of outcome as there is overall a high degree of certainty of adjudication and direction of outcome towards no disregard in the mid to high frequency rationales which declines in the low frequency range.

Given this finding the slippery reputation of disregard adjudication may be overstated. Academic and judicial commentaries of the area may be disproportionately emphasising the uncertainty from minority rationales and are perhaps not recognising that in a significant majority of cases the judiciary when high or mid frequency rationales are instrumental find that it is not present and do not disregard the corporate form.

In policy terms this would point to both the attempts at reform in *Adams* and *Prest* as being at least partly misdirected, which may explain why matters continue to be problematic. Our evidence would suggest that broadly over the range of our data set the judiciary have policed Agency and Façade/Sham/Shell particularly robustly, which would not indicate a problem unless one views any corporate disregard outcome as problematic. Deception is similarly adjudicated overall but with, as we consider below, instability at the Intermediate Appellate level and unlike Agency and Façade/Sham/Shell is strongly influenced by substantive claim. Within the high frequency rationale evidence Control/Domination would seem to warrant particular attention given its uncertain adjudication, similarly within the mid frequency rationales Statutory Interpretation sits within the uncertain range. Where the reform instinct in *Adams* was right was in the low frequency rationales in that all five would arguably warrant attention. In particular our data on injustice and its low level persistence after *Adams* had specifically dismissed it as a legitimate rationale would indicate that even where a specific judicial intervention occurs in this area it doesn't necessarily embed itself as precedent would require. The continued presence of *Alter Ego* as a rationale since *Prest* would seem to reflect that same phenomenon.

Moreover, as we observe below our dataset confirms that Façade/Sham/Shell in particular became an increasingly prominent rationale since the *Adams* decision which may further explain the attention drawn to Façade/Sham/Shell in *Prest*.

FIGURE 2A. FREQUENCY OF CASES &
RATIONALES WITH LOW DISREGARD RATES OVER TIME

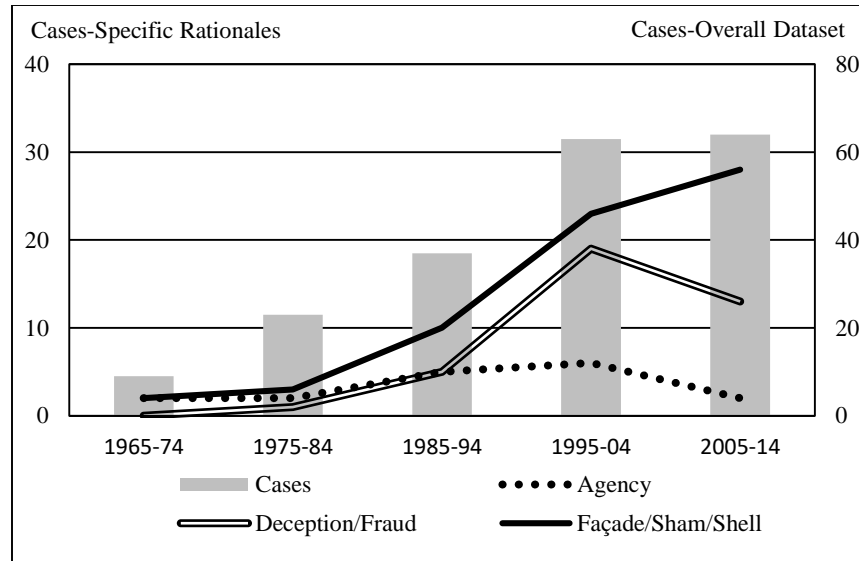


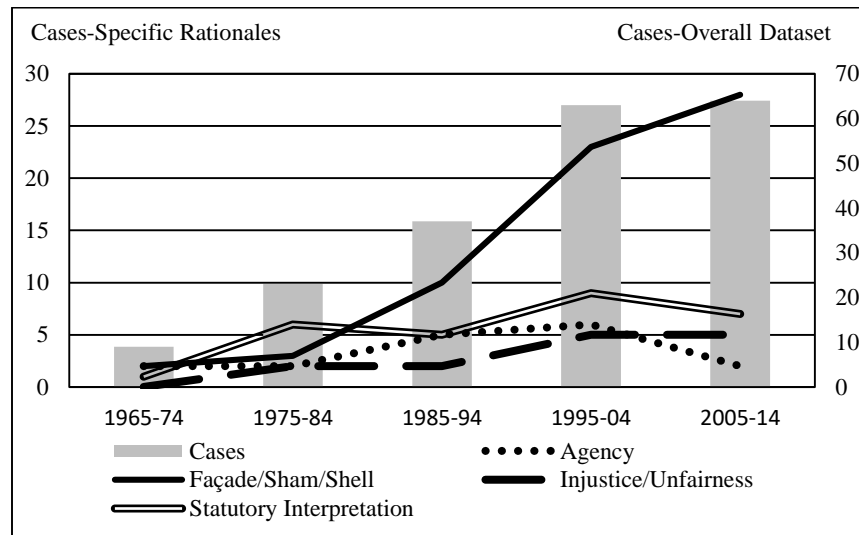
Figure 2A provides a time-based comparison of the frequency with which Agency, Deception, and Façade/Sham/Shell have been instrumental rationales; as a point of reference, the number of cases within our dataset for each decade is supplied in connection with the scale on the right-hand side of the graph. Agency has ebbed and flowed rather steadily over the decades, and thus its presence has diminished given the increase in the number of cases. In contrast Deception and Façade/Sham/Shell mirrored each other in the decade after *Adams v Cape Industries Plc*,¹⁰⁷ steadily increasing in proportion to the number of cases. Deception's rise and fall is puzzling. Although it had been rising over previous decades its rise in the 1990s seems to have been directly related to the *Adams* decision. In *Adams* an "intention to deceive" is briefly discussed but not at issue as it was not found to be present.¹⁰⁸ It may be that by implication its presence, if the preferred evidence was present, would have been determinative but it may also be that perhaps the narrowing of disregard categories in *Adams* may have caused litigants to place more emphasis on deception elements of an action which associate closely with Façade Sham/Shell. However, Deception sharply declines as an articulated instrumental rationale after the new millennium, while Façade Sham/Shell continued to increase. Similarly, as Figures 2A above, and B, C, below illustrate, while Façade/Sham/Shell had been increasing in frequency over the course of the 1980s it accelerates rapidly after the narrowing of other rationales and its reaffirmation by *Adams* in 1990. This may also explain its low overall disregard rate as it may be that its frequency increase is partly because

¹⁰⁷ *Adams v Cape Industries* [1990] Ch 433.

¹⁰⁸ *Adams* page 824.

with the narrowing of acceptable categories it became a catchall quasi-metaphorical rationale for litigants. In simple terms after *Adams* the proposition may have been put more and more that some element of a case fits within the façade rationale and in turn the courts found that while it is a legitimate rationale it is not present in the vast majority of cases where it is claimed to be present.

FIGURE 2B. ADAMS RATIONALES OVER TIME.



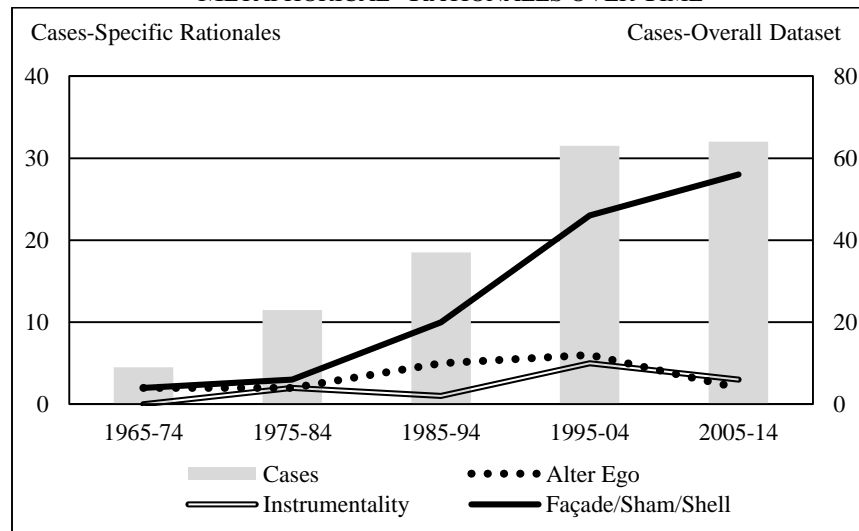
The impact of *Adams* can be observed closely in Figure 2B above where we consider the key rationales the case legitimised and one key category it dismissed.¹⁰⁹ As we have noted, Façade/Sham/Shell experiences an extraordinary increase in frequency immediately after *Adams*. But the rationale interestingly has a low 27.54% disregard rate, and thus strongly tends to be instrumental in its absence in that the judiciary did not find the necessary elements of Façade/Sham/Shell to be present. By comparison Statutory Interpretation also is cited by courts more frequently after *Adams*, but then declines after the new millennium; and the 42.86% disregard rate indicates that Statutory Interpretation is a more finely balanced rationale which slightly tilts towards being instrumental in its absence. The increase in Statutory Interpretation's frequency may be due to its becoming a specific rationale category after *Adams* within which judges felt safe articulating on disregard, while its fine balance indicates its broad discretionary nature. Again, as discussed above, in policy reform terms it would possibly argue for a more robust set of criteria for rationalising corporate disregard when interpreting a statute given its uncertain direction and presence within the case law. Agency as a category

¹⁰⁹ The Court of Appeal in *Adams* also dismissed Lord Denning's Single Economic Entity proposition for corporate disregard as having never reached a sufficient degree of judicial consensus to have any legitimacy.

of disregard rationale increases slightly in the decade after *Adams* and as with Statutory Interpretation declines in the new millennium. As with Façade/Sham/Shell, Agency is highly instrumental in its absence, with a 30% disregard rate. Unlike the more metaphorical Façade/Sham/Shell, the Agency rationale articulated in *Adams* is very specifically a close express agency, which may explain why it does not have the explosive growth observed in Façade/Sham/Shell and why both Lady Hale and Lord Neuberger consider it to have continued legitimacy in *Prest*.¹¹⁰

As discussed earlier Injustice/Unfairness was a key rationale category that was specifically disapproved of in the *Adams* case and yet rises in frequency over the decade after *Adams* and remains an important, if low frequency category, in the rest of the decade data. Its 46.67% disregard indicates a finely balanced category in terms of injustice being found present or absent by the judiciary and again highlights a discretionary interpretable nature. In reality though its fine balance and low frequency overall means it only leads to a disregard outcome in a very small number of cases. The fact it is finely balanced and remains a persistent category may, along with the metaphorical categories, may though contribute to the observations, both judicial and academic, about the ambiguity of rationale present in the area of corporate disregard. It also indicates that despite a significant precedent in *Adams* ruling out its legitimacy as a rational, judges have continued to utilise it. As noted earlier Lady Hale's "unconscionable advantage" concept in *Prest* indicates that even at the highest level a broad injustice based exception is contemplated.

FIGURE 2C. FREQUENCY OF CASES & "METAPHORICAL" RATIONALES OVER TIME



¹¹⁰ *Prest* paras 83 and 92.

As compared to other conclusory, metaphorical rationales, Façade/Sham/Shell is the only high frequency one and it enjoys a conspicuous increase over time. In that sense it is unusual both generally and specifically within the metaphorical rationales. This may be because while *Adams* legitimises it as a category it does so with reference to the specific circumstance present in cases such as *Jones v Lipman* so in effect using a metaphorical wrapper to legitimise a specific set of circumstance that are far from uncertain. In *Prest* Lord Sumption's evasion and concealment principles were intended to put some rigour into Façade/Sham/Shell, as he viewed it as a confusing and questionable rational, by removing the metaphorical aspect.¹¹¹ As we have noted above our data indicates that although it was a high frequency and increasing rational, the judiciary were policing Façade/Sham/Shell in a rigorous manner. As also noted earlier given the difficulty the judiciary have had utilising Lord Sumption's narrow principles since *Prest*, our data may back up recent academic observations about the effect of Lord Sumption's principles by indicating that the metaphorical aspect of the historical Façade/Sham/Shell combined with the legitimising focus in *Adams* on cases such as *Jones v Lipman* provided a balance of rigour and flexibility that may have been lost in Lord Sumption's principles. Revisiting this matter would be an important point of possible judicial attention.

There were, however, some patterns among other rationales that exhibited relatively high disregard rates, which might warrant more concern. When courts focused on specific, concrete evidence, such as the Commingling of Assets (58.33%) and Siphoning of Funds (60.00%), the outcome leaned more towards disregard of the corporate form; but this also applied to the conclusory rationales, Alter Ego (58.82%) and Instrumentality (66.67%). This may indicate that concrete evidence-based rationales have high rates of disregard where that evidence is present and that conclusory low frequency highly metaphorical rationales have high rates for exactly the opposite reason that there is no concrete evidence and the metaphor is occluding whatever the real reason is. Again, it may be that this contrast is one of the reasons the area is regarded as problematic and points to a reform focus on the two problematic occluding metaphorical low frequency rationales of *alter ego* and instrumentality.¹¹² Additionally as discussed earlier the difficulty of working with Lord Sumption's principles since *Prest* seems to have led to the recent unexpected rise in explicit or quasi *alter ego* rationales. One explanation for that may be that in those principles closing off the metaphorical aspect

¹¹¹ *Prest* para 28.

¹¹² The dichotomy between Deception and Undercapitalization is also notable. The low disregard rate for Deception (32.56%) applied to most of its sub-sets, Fraud/Deceit (26.67%), Assets (33.33%), and Identity (45.45%). But is to be contrasted with Undercapitalization, which was an infrequent rationale, but featured a 100.00% disregard rate. The discrepancy is notable because of a persistent debate among commentators about whether undercapitalization is a serviceable proxy for Deception that would warrant disregard of the corporate form. UK courts appear to be in agreement that inadequate capitalization alone is an acceptable justification for corporate disregard.

of Façade/Sham/Shell the judges have in search of some flexibility reinserted it through *Alter Ego* justifications.

Table 2. Disregard Rate for Rationales by Jurisdiction

Rationale	Trial Court	Intermediate Appellate	Supreme Court
Agency	22.22%	37.50%	33.33%
Alter Ego	42.86%	66.67%	100.00%
Assumption of Risk	0.00%	---	---
Commingling	62.50%	66.67%	---
Control/Domination	57.89%	60.00%	28.57%
Deception	20.00%	47.37%	25.00%
Façade/Sham/Shell	30.23%	26.09%	0.00%
Informalities	100.00%	---	---
Injustice/Unfairness	41.67%	100.00%	50.00%
Instrumentality	50.00%	100.00%	---
Siphoning of Funds	60.00%	50.00%	---
Statutory Interpretation	52.94%	35.29%	0.00%
Undercapitalization	0.92%	100.00%	---
Other	22.22%	26.67%	0.00%

The nature of legal appeal processes has been found to be relevant to disregard outcomes in the UK and elsewhere,¹¹³ and particularly at the Intermediate Appeal level within the UK where it has been suggested that the instability in the corporate disregard doctrine lies.¹¹⁴ Examining the rationales at each court level may also provide a gauge of the health of the precedential ecosystem where a high degree of difference between disregard rates at each level might indicate precedential confusion and perhaps provide a focus for where that confusion lies.

Overall we did find a pattern of generally higher rates of disregard within the rationale categories at the intermediate appellate level than trial, which might warrant concern, where rates of disregard were higher in 9 of the 12 rationale categories where appeals were present. In particular remarkably high rates were observed in the Injustice, Instrumentality and Undercapitalization rationale categories at the Intermediate Appeal Level. Instrumentality and Undercapitalization feature a very small number of observations that account for the high volatility between the Trial Court and Intermediate Appellate Court levels. This again leaves Injustice,

¹¹³ C. Mitchell, 'Lifting the Corporate Veil: An Empirical Study' (1999) 3 *Company Financial & Insolvency L Rev* 15 at 20, RB Thompson, 'Piercing the Corporate Veil: An Empirical Study' (1991) 76 *Cornell L Rev* 1036 at 1050, MF Khimji and CC Nicholls, 'Piercing the Corporate Veil in the Canadian Common Law Courts: An Empirical Study' (2015) 41 *Queen's LJ* 207, IM Ramsay and DB Noakes, 'Piercing the Corporate Veil in Australia' (2001) 19 *C&SLJ* 250.

¹¹⁴ See Mitchell above and A. Dignam and PB Oh (2019) *Disregarding the Salomon Principle: An Empirical Analysis, 1855-2014*, *Oxford Journal of Legal Studies*, Vol. 39, No. 1 (2019), pp. 16–49.

despite its disapproval in *Adams*, as a notable, continuing but low frequency instrumental Intermediate Appellate Court rationale that appears to drive disregard of the corporate form outcomes at that level and which might warrant reform consideration. The overall pattern reversed at the Supreme Court level where rates were generally much lower across 7 of the 8 rationale categories, where appeals to the Supreme Court were present, with only Alter Ego breaking that trend with a notable 100% rate.

Overall Alter Ego, Façade/Sham/Shell and Statutory Interpretation stand out as having unusual patterns of disregard at each appellate level. The disregard rates for Alter Ego rise at the Intermediate Appellate and Supreme Court Levels, which appears to have some relationship to this being driven by criminal Alter Ego cases in the English Court of Appeal. This may also play an additional part in explaining why *alter ego* remains a persistent rationale since *Prest* as a number of those cases are criminal Court of Appeal cases. This indicates that Family law may not be the only contextual outlier in the judicial utilization of corporate disregard concepts – something we take up further in the next section. However, we could find no such correlation at the Supreme Court level that might help explain the 100% disregard rate for Alter Ego.

The disregard rates for both Façade/Sham/Shell and Statutory Interpretation drop at both the Intermediate Appellate and Supreme Court Levels, which may be because they are *Adams* categories that may bring a greater level of exacting precedential scrutiny. This might also be partly true of Agency with its rising and falling pattern. If we return to the disregard rates as indicators of certainty/uncertainty of judicial analysis, we find that the Trial Courts are relatively uncertain in their adjudication of disregard rationales with 6 rationale rates from 11 in the uncertain range.¹¹⁵ Intermediate Appellate courts have a much higher degree of certainty of adjudication overall with only 3 rationale rates from 11 in the uncertain category. The Supreme Court had the highest level of overall certainty of adjudication with 7 of the 8 rationales adjudicated at the Supreme Court Level falling within the certain range. These patterns would seem to reflect the instability present in both the judicial and academic accounts of the disregard doctrine that seems, despite attempts by the senior courts, to lack a clear precedential direction for the High Court.

However, if we examine the individual rationale rates by frequency band, as earlier, we can provide a more exact focus for where that instability lies. Of the three high frequency rationales, Control/Domination, Deception and Alter Ego, again we can observe that Control/Domination is the only one within the uncertain range at the Trial Court level. At the Intermediate Appellate level adjudication becomes more uncertain with Control/Domination and Deception falling within the uncertain range. At the Supreme Court Level all three are within the certain range. Within the three categories in the mid frequency range,

¹¹⁵ As before eliminating the three low number rationales – Assumption of Risk, Informalities and Undercapitalization.

Statutory Interpretation, Agency and Other, only one, Statutory Interpretation, is in the uncertain range. At the Intermediate Appellate and Supreme Court level all three were within the certain range.

Indeed, the analysis by mid and high frequency rationales, which represent the great majority of cases within our data set, indicates that apart from Control/Domination and Deception at the Intermediate Appellate level there is not just a high degree of certainty as to adjudication across jurisdiction level but all the certain rationales rates in the high to mid frequency at all court levels are in the low percentages, indicating a high degree on consensus towards no disregard.

However, in the low frequency rationales of Alter Ego, Comingling, Injustice, Instrumentality, and Siphoning, at Trial level matters were notably different in that 4 of the 5 were in the uncertain range. At the Intermediate Appellate level that switches around with 4 of the 5 in the certain range. Notable in the certain range of low frequency rationale rates at the Trial and Intermediate Appellate range, is that unlike the mid-high frequency rationales all the low frequency rationales in the certain range are high percentage rates indicating a consensus towards disregard. At the Supreme Court level 2 of the 3¹¹⁶ rationale categories adjudicated are within the certain range but with no consensus as to disregard or no-disregard.

Overall there is a high degree of certainty within the adjudication of rationales across jurisdiction. In the mid and high frequency rationales at all levels of adjudication within the certain rationales there were low disregard rates indicating a consensus towards upholding the corporate form. However, two of the high frequency rationales, Control/Domination and Deception, have an unusual degree of uncertainty about their adjudication at the Intermediate Appellate level, which in policy terms might warrant judicial attention.¹¹⁷ Similarly in the low frequency rationales matters were different with a high degree of uncertainty at trial court and, apart from the Supreme Court, a tendency within the certain rational rates to disregard the corporate form. On our evidence here this would again warrant a focus in terms of judicial reform.

Table 3 below provides the disregard rates for sub-sets of the Statutory Interpretation and Other rationales.

¹¹⁶ In the low frequency range a small number of cases reached the Supreme Court level.

¹¹⁷ Solely in the case of Deception the elevated corporate disregard rate for the Intermediate Appellate level is entirely the result of English Court of Appeal decisions, with relative parity between its Civil versus non-Civil Divisions.

Table 3. Rationale Sub-Category Frequency & Disregard Rate¹¹⁸

Rationale	<i>n</i> ¹¹⁹	Disregard Rate
Statutory Interpretation	35	42.86%
Commercial	2	0.00%
Corporate	2	0.00%
Criminal	5	80.00%
Discrimination	1	0.00%
Employment	4	25.00%
Film	1	100.00%
Health	1	0.00%
Housing	3	33.33%
Intellectual Property	1	100.00%
International	1	0.00%
Marital	2	50.00%
Maritime	1	100.00%
Real Property	9	33.33%
Tax	2	100.00%

¹¹⁸ Neither of these groupings permits any reliable generalisations about the categorical rationale, but a few interesting points are worth noting. The Statutory Interpretation category comprises a diverse range of subject matter which means at the granular level of sub-category there is a small numbers problem. As such, it tells us very little except observing the extreme nature of the disregard rate outcomes where 9 of the 14 sub-categories have either a 0% or a 100% disregard rate. This extremity may indicate the extent of the discretion present in this category. The breadth of statutory types, though, may relate to its status as a legitimate rationale in the *Adams* case and indicates that courts entertain corporate disregard requests in a wide swath of rather different cases, and that there does not appear to be any kind of consistent attribute except the broad extent of judicial discretion that the rationale creates. The Other category skews heavily towards a low disregard rate with 8 out of 14 sub-categories having a 0% disregard rate and 4 others having an approximate low 30% rate. Many of these cases were not decided on solitary grounds, but often in connection with a finding that there was insufficient evidence of the corporate form being a Façade/Sham/Shell.

¹¹⁹ See *supra* note 85.

Table 3. Rationale Sub-Category Frequency & Disregard Rate (cont.)

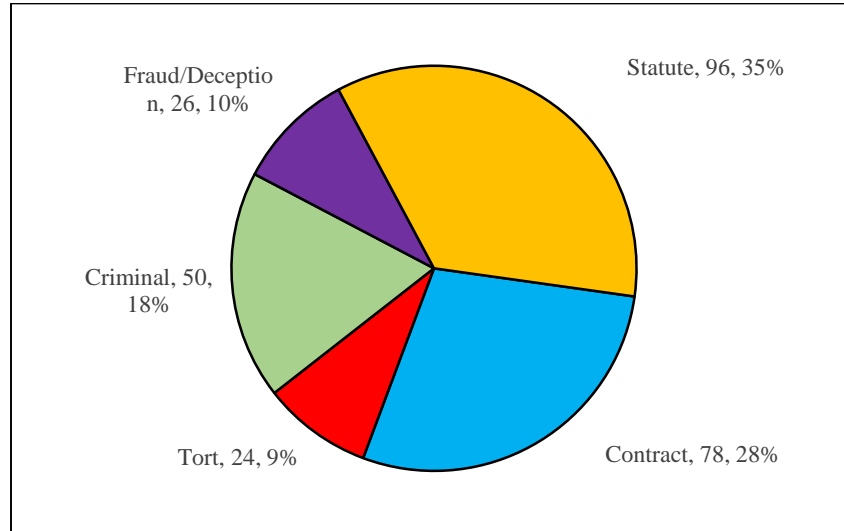
Rationale	<i>n</i> ¹²⁰	Disregard Rate
Other	36	25.00%
Abuse/Impropriety	1	100.00%
Beneficial Owner	10	30.00%
Collateral Proceeding	1	100.00%
Consent/Contract	3	33.33%
Constructive Trust	2	0.00%
Director Liability	4	0.00%
Harm	1	0.00%
Incidental	3	33.33%
Injunctive Policy	3	33.33%
Jurisdiction	2	50.00%
Minority Interest	1	0.00%
Sole Proprietor	1	0.00%
Sufficiency of Evidence	2	0.00%
Third-Party Rights	3	0.00%
Trial Court's Decision	1	0.00%

Statutory Interpretation and Other rationales comprise a significant part of our overall dataset. One or both of those rationales appears in 70 cases, or 32.86% of our total dataset. And very few of the rationales within either the Statutory Interpretation or Other category seem to be grounded in reasons that can be analysed or organised in a systematic fashion. Again this may feed the overall perception of an unruly doctrine without perhaps an understanding of the extraordinary breath of circumstances in which the judiciary are working with corporate disregard claims. This extraordinary breath of circumstance may matter in the interpretation of rationales.

While disregard rationales are expressed within a particular remedial context we were also concerned, as pioneered by the court in *Prest* with its concern as to how disregard rationales were operating in family law, to examine possible contextual elements that might relate to the substantive claim within the action. Figure 3 depicts how substantive claims were distributed in our dataset.

¹²⁰ See *supra* note 85.

FIGURE 3. DISTRIBUTION OF SUBSTANTIVE CLAIMS



Although Charles Mitchell utilised a more fine-grained set of categories for substantive claims,¹²¹ we both find a larger number of Contract rather than Tort claims, with Statutory claims comprising the largest overall category. These proportions, however, do not hold when examined in relation to the frequency of different types of instrumental rationales where Control/Domination, Deception, and Façade/Sham/Shell form an important cluster across all substantive claims.

¹²¹ Mitchell, *supra* note __, at 24 (reporting 24 Procedural, 35 Contractual, 18 Tortious, 7 Equitable Wrongdoing, 7 Admiralty (in rem), 74 Statutory, and 9 Criminal claims).

Table 4. Frequency of Rationales by Substantive Claim¹²²

Rationale	Contract	Tort	Criminal	Fraud/	
				Deception	Statute
Agency	5	4	4	3	15
Alter Ego	2	3	3	---	13
Assumption of Risk	1	---	---	---	---
Commingling	6	1	2	1	7
Control/Domination	11	7	7	4	38
Deception	20	1	6	10	23
Façade/Sham/Shell	35	5	5	11	30
Informalities	---	---	---	---	1
Injustice/Unfairness	5	1	---	2	10
Instrumentality	6	1	1	2	4
Siphoning of Funds	2	2	---	2	5
Statutory Interpretation	3	1	5	---	35
Undercapitalization	2	---	---	---	1
Other	14	7	1	7	17

As Table 4 above shows, courts cite Agency, Alter Ego, Siphoning of Funds a comparable number of times with respect to all non-Statutory claims; put differently, these rationales appear to be disproportionately *underrepresented* with respect to Contract and Criminal claims. By way of contrast, Control/Domination, Deception, and Façade/Sham/Shell all seem to be cited roughly in proportion to the distribution of substantive claims within our dataset.

Table 5. Disregard Rate for Rationales by Substantive Claim

Rationale	Contract	Tort	Criminal	Fraud/	
				Deception	Statute
Agency	20.00%	25.00%	25.00%	33.33%	33.33%
Alter Ego	50.00%	66.67%	100.00%	---	61.54%
Assumption of Risk	0.00%	---	---	---	---
Commingling	50.00%	100.00%	50.00%	100.00%	71.43%
Control/Domination	27.27%	71.43%	100.00%	75.00%	60.53%
Deception	10.00%	0.00%	100.00%	50.00%	39.13%
Façade/Sham/Shell	28.57%	20.00%	40.00%	54.55%	20.00%
Informalities	---	---	---	---	100.00%
Injustice/Unfairness	60.00%	100.00%	---	100.00%	40.00%
Instrumentality	66.67%	100.00%	100.00%	100.00%	50.00%
Siphoning of Funds	50.00%	100.00%	---	100.00%	40.00%
Statutory Interp.	0.00%	100.00%	80.00%	---	52.94%
Undercapitalization	100.00%	---	---	---	100.00%
Other	21.43%	14.29%	100.00%	28.57%	27.78%

¹²² Here we are reporting the number of instances in which rationales appear in relation to different types of claims. For instance, Alter Ego appears in a case with two different claims, and so the table depicts that rationale twice -- once under Contract and once under Statutory Interpretation.

As Table 5 evinces, the corporate disregard rates for each rationale are not very stable across the types of substantive claims. Agency and Façade/Sham/Shell have an exceptional status within the data, as they have relatively low disregard rates that are roughly consistent across all substantive claims.¹²³ As we have noted before, this may be because Agency and Façade/Sham/Shell are among the concrete strongly policed categories legitimized in *Adams* and again would suggest Lord Sumption was mistaken in attempting to reform Façade/Sham/Shell. Statutory Interpretation, another *Adams* rationale, behaves differently within the substantive claims and its discretionary nature may explain the wide range of disregard rates across substantive claims.

Interestingly, as Table 5 above indicates, the disregard rate seems to bear a stronger relationship with the type of substantive claim than the rationale. The Criminal and Fraud/Deception substantive claim categories have for example comparatively high rates and a high degree of certainty of adjudication tilting strongly towards a disregard outcome broadly across the instrumental rationales regardless of frequency. Statute as a substantive claim has a more mixed picture with a mixed range of rates and a high degree of certainty of adjudication tilting towards a no disregard outcome. By frequency of rationale that mix of rates is also present.

Our dataset also features a higher overall disregard rate for most rationales in Tort versus Contract. Deception, Façade/Sham/Shell, and Other are exceptions in this regard, all of which feature comparatively low disregard rates for Tort and Contract. Tort particularly has a distinctive feature if analyzed by certainty of adjudication. With its distinctive low and high rates it has a remarkable certainty of adjudication across all rationales with a tendency towards disregarding the corporate form. Indeed, it is notable that across all the rationales by substantive claim there are a high number of rationale rates at either end of the certainty of adjudication percentages with not many in the uncertain category. Conversely, Contract stands out for the relatively high number of rationales in the uncertain category. In terms of the Contract v Tort narrative its not just that Tort has an unusually certain relatively uniform disregard outcome oriented approach to the adjudication of disregard rationales but also that disregard rationales operating in Contract have a higher degree of uncertain adjudication.

Analysis by frequency allows us to focus in on the key differences. In Contract in contrast to all the other substantive claims all three high frequency rationales (Façade/Sham/Shell, Deception and Control/Domination) are uniformly certain in adjudication and in terms of their low rates, a strong tendency to uphold the corporate form. In the mid frequency rationales (Statutory Interpretation, Agency and Other) the pattern is exactly the same. However, a remarkable amount of uncertainty is present with 4 of the 5 rationales in the low frequency rationale category

¹²³ The Other category also has a mostly low rate stability. As we noted earlier, it is by its nature a catch-all category that inexplicably is skewed towards a low disregard rate overall.

(Alter Ego, Instrumentality, Comingling, Injustice and Siphoning) having rates within the uncertain adjudication range. Overall Contract stands out with its certainty of adjudication focused on low rates tilting strongly towards no disregard in the mid and high frequency rationales and the remarkable uncertainty found in its low frequency rationales. Contrasted with Tort, in terms of mid to high frequency rationales, Tort has a more mixed picture with a high degree of certainty but less uniform direction of outcome as while the majority of rates are at the low end there are also a minority of very high rates. The big difference occurs in the low frequency rationales where Tort has remarkably high disregard rates.

Overall, in Contract, the judiciary are much more reluctant to disregard the corporate form than where the substantive claim is Tort, Criminal or Fraud/Deception, while a more mixed picture exists where Statute is the substantive claim. Perhaps the most striking example is Control/Domination, where the disregard rate is quite low for Contract (27.27%), and yet extremely high for all other remaining substantive claims. Similarly, as we noted above highly elevated corporate disregard rates were present in almost all of the rationales for Criminal and Fraud/Deception claims. These results are difficult to explain in light of the fact that corporate disregard is a remedy whose rationales should be detached from the nature and dynamics of the underlying substantive claim.¹²⁴

In *Prest* the view of the court in looking at family law as applying a contextual disregard doctrine was, on our substantive claim evidence, right. Our evidence though would suggest the issue is much more prevalent than just family law and that in particular Tort and Criminal disregard adjudications seem strongly contextual. This may be both a key part of their adjudication and the historical oft commented upon instability of corporate disregard.

As such the rationales broadly appear to operate differently depending on the nature of the substantive claim, and no overall thread is evident apart again from two of the *Adams* rationale categories of Agency and Façade/Sham/Shell. We were unable to detect any statistical patterns that might provide a possible answer as to why substantive claims were so significant and would suggest that a key element the data may be picking up is that some articulated rationales are covering an occluded, deeper and clearly important claim specific element to the outcomes such as the involuntary nature of Tort and the voluntary nature of Contract.¹²⁵

V. CONCLUSION

Our study attempts to establish an empirical foothold within this notoriously slippery area of law that might form a different way of looking

¹²⁴ See, e.g., P Oh. ‘Veil-Piercing Unbound. (2013) 93 *Boston University Law Review* 89.

¹²⁵ On the broader impact of contextual elements in disregard cases see A. Dignam and PB Oh (2019) above.

at reform issues in corporate disregard. The empirical study covered the broad range of rationales first by rates, to identify where issues might be arising with individual rationales, then by jurisdiction, to see if there were problematic interpretation issues in particular parts of the court levels and finally, by substantive claim to see if contextual aspects of the doctrine, as with family law in *Prest*, were influencing outcomes. Overall this provides an alternative evidential map of where concerns may be arising within the UK courts development of corporate disregard which allows a more targeted response to reform.

We found that overall there is no empirically detectable single thread of rationale that runs through all disregard claims across the vast range of circumstances in which it operates. However, Agency and Façade/Sham/Shell have, particularly after *Adams v Cape Industries Plc*,¹²⁶ become key robustly policed elements of disregard outcomes. This would also in our view indicate that the focus on reforming Façade/Sham/Shell in *Prest* may have been misplaced and that replacing the *Adams* interpretation of that rationale with its combined analogous and metaphorical elements for the narrower concealment and evasion principles may explain the difficulty the judiciary have had with the narrowness of those principles absent a metaphorical flexibility of interpretation. Deception was also notably a high frequency rationale with remarkable certainty of adjudication, apart from at the Intermediate Appellate level, that tilted strongly towards no-disregard. Its presence may be indicative of a pattern of preferred evidence which may relate to the underlying equitable principle discussed in *Prest* that fraud unravels everything.¹²⁷ While deception was unrelated directly to the *Adams* categories it increased in the 1990s directly after the *Adams* decision. We don't have an explanation for this phenomenon but we hypothesize it may be related, at least initially, to an increased emphasis on deceptive behavior surrounding Façade/Sham/Shell.

Overall, belying the areas reputation in the literature we found a high degree of certainty of judicial adjudication within our data, focused on a no-disregard outcome. Uncertainty of adjudication, when present, was found when Control/Domination and Statutory Interpretation were instrumental and in the low frequency rationales particularly the metaphorical ones. Injustice, although infrequent, was notable for its persistence and uncertain adjudication, despite its dismissal as an illegitimate rationale in the *Adams* case. For a legal system that operates on a precedential basis the continuing existence of injustice as a rationale after *Adams*, even though low frequency, is particularly noteworthy.

On our evidence of the broad rates our concern would not lie with the robustly policed Agency and Façade/Sham/Shell but rather with Control/Domination, Deception, Statutory Interpretation, Injustice and the

¹²⁶ *Adams & Ors. v Cape Industries Plc* [1990] BCC 786.

¹²⁷ Originating in *Rochefoucauld v Boustead* [1897] 1 Ch 196 (CA), the principle is discussed extensively with respect to corporate disregard in *Prest v Petrodel Resources Ltd* [2013] 2 AC 415 paras 18,83 and 89.

low frequency metaphorical rationales. All apart from Control/Domination and Deception contain by their nature broad discretion or in the case of the metaphorical rationales hidden discretion which may explain their uncertain adjudication and so Control/Domination's and to an extent Deception (at the Intermediate Appellate level) presence in the uncertain category is perplexing given they both lend themselves to more concrete interpretation and so point, to rationales of particular concern.

Examining rationales by trial jurisdiction we found rationale disregard rates broadly higher at the Intermediate Appellate level than at Trial or Supreme Court level. On the face of it this would point to instability in the interpretation of corporate disregard rationales at the Intermediate Appeal level. This, however, was not the complete picture. When broken down by frequency of rationale we found a high degree of certainty of judicial adjudication focused on upholding the corporate form. That contradiction is explained by two high frequency rationales, Control/Domination and Deception, that were uncertain in adjudication at the Intermediate Appellate level, while *Alter Ego* and Injustice were also notable low frequency driver of disregard outcomes focused at the Intermediate Appellate level. Why these four rationale categories engage instability at the Intermediate appellate level is unclear but provides an additional empirical signal to potentially focus reform.

Possibly the most important evidential finding in our study emerged when rationales were viewed by substantive claims, remarkably, the disregard rates broadly have a stronger link to the underlying substantive claim than the rationale expressed, which may indicate an obscured contextual element related to the substantive claim is operating. Agency and Façade/Sham/Shell however appear unaffected by the underlying substantive claim which would further emphasis their core rationale status and again that the court in *Prest* may have been erroneous as perceiving Façade/Sham/Shell as problematic. The identification of substantive claim as influential, in the way family law as a distinct area was interpreting disregard rationales, was of course a recognized driver of the Supreme Court's decision in *Prest*. Our evidence would indicate the contextual element of substantive claim is influencing the interpretation of corporate disregard rationales across a broader range of areas, not just family law. The overall effect of substantive claim on the rationales may also reflect the literature in the area that identifies the often occluded nature of the rationale within the case law and provides an empirical signal that one size fits all principles for corporate disregard may not be realistically operable across the range of circumstance faced by the judiciary as the rationales may hide a deeper unarticulated element related to the core circumstance of the substantive claim. This again would suggest that Lord Sumption's narrow principles of concealment and evasion should be revisited. We suspect that given the recent debates within the academy and the judiciary about the status of *Prest* that these types of choices are close at hand.

APPENDIX OF CASES

- A v A [2007] EWHC 99.
Acatos & Hutcheson Plc v Watson [1995] BCC 446.
Adams & Ors. v Cape Industries Plc [1990] BCC 786.
Aerostar Maintenance Int'l Ltd. v Wilson [2010] EWHC 2032.
Airbus Operations Ltd. v Withey [2014] EWHC 1126.
Akzo Nobel NV v Competition Commission [2013] CAT 13.
Ali Shipping Corp. v Shipyard Trogir [1998] 2 All ER 136.
Amalgamated Investment & Property Co. Ltd. v Texas Commerce Int'l Bank Ltd. [1981] 3 WLR 565.
Anglo German Breweries Ltd. v Chelsea Corp. Inc. [2012] EWHC 1481.
Antonio Gramsci Shipping Corp. v Lembergs [2011] EWHC 333.
Antonio Gramsci Shipping Corp. v Recoletos Ltd. [2013] EWCA 730.
Atlas Maritime Co. S.A. v Avalon Maritime Ltd. [1991] 4 All ER 769.
B v B [1978] Fam 181.
Bank of Credit & Commerce Hong Kong Ltd. v Sonali Bank [1994] CLC 1171.
Bank Voor Handel en Scheepvaart NV v Slatford [1953] 1 QB 248.
Bannoeks v Secretary of State for Transport [1995] 2 EGLR 157.
Battlebridge Group Ltd. v Amala Equity Ltd. [2006] EWHC 2982.
Bishopsgate Parking (No. 2) Ltd. v Welsh Ministers [2012] UKUT 22.
Booth v Helliwell [1914] 3 KB 252.
Bradford Savings & Loan Ltd. v Barclays Bank Plc, Transcript.
Brain v LCC [1957] 9 P & CR 113.
Brittain v Courtway Estates Holdings SA [2008] EWHC 1791.
Brookes v Borough Care Services Ltd. [1998] ICR 1198.
Brown & Root Technology Ltd. v Sun Alliance [1997] 18 EG 123.
Brown v InnovatorOne Plc [2012] EWHC 1321.
Buckinghamshire County Council v Brown [2001] 81 P & CR 25.
Buckinghamshire County Council v Briar [2002] EWHC 2821.
Butcher Robinson & Staples Limited v London Regional Transport [2000] 79 P & CR 523.
C Czarnikow Ltd. v Centrala Handlu Zagranicznego Rolimpex [1979] AC 351.
Caplan v Taefi, Transcript.
Caterpillar Financial Services (UK) Ltd. v Saenz Corp. Ltd. [2012] EWHC 2888.
Charlesworth v Relay Roads Ltd. [1999] All ER 87.
City of Wakefield Metropolitan District Council v Huzminor Investment [1990] 10 EG 76.
Cory (William) & Son Ltd. v Dorman Long & Co. [1936] 2 All ER 386.
Cowan de Groot Properties Ltd. v Eagle Trust Plc [1992] 4 All ER 700.
CPS v G [2010] EWHC 1117.
Creasey v Breachwood Motors Ltd. [1992] BCC 638.
Credit Suisse v Allerdale [1997] QB 306.
Cristina v Seear [1985] 2 EGLR 128.

- Crown Prosecution Service v Compton [2002] EWCA 1720.
Crown Prosecution Service v Eastenders Group [2014] 2 WLR 1269.
Crown Prosecution Service v Jennings [2008] UKHL 29.
Crown Prosecution Service v Malik [2003] EWHC 660.
D.H.N. Food Distributors Ltd. v Tower Hamlets London Borough Council [1976] 32 P & CR 240.
Denson v Social Security Commissioner, Transcript.
E. Green & Son (Castings) Ltd. v Association of Scientific, Technical and Managerial Staffs [1984] ICR 352.
Eaton Square Properties Ltd. v Ogilvie [2000] 16 EG 143.
Ebbw Vale Urban Dist. Council v South Wales Traffic Licensing Authority [1951] 2 KB 366.
Eghoyan's Pitta Bakery Limited v Mustafa [2003] EWHC 3463.
Emslie & Simpson Ltd. v Aberdeen District Council [1995] SC 264.
Equitas Ltd. v Horace Holman & Co. [2008] EWHC 2287.
Esso Petroleum Co. Ltd. v Mardon [1976] 2 WLR 583.
Evans v Engelson [1979] 253 EG 577.
Excalibur Ventures LLC v Texas Keystone Inc. [2014] EWHC 3436.
Fairline Shipping Corp. v Adamson [1975] 1 QB 180.
Farrar v Farrars Ltd. [1888] 40 ChD 395.
Fenech v Serious Organised Crime Agency [2013] UKFTT 555.
FG (Films) Ltd. (Re) [1953] 1 WLR 483.
Finurba Corporate Finance Ltd. v Sipp SA, 2011 WL 1151232.
Fischer (George) (GB) Ltd. v Multi Construction Ltd. [1995] 1 BCLC 260.
Floods of Queensferry Limited v Shand Constr. Limited, 1999 WL 478179.
Floor v Davis [1980] AC 695.
Fox v Hall [2014] EWHC 2747.
Frederick Charles Properties Ltd. v The Cross Fire Co. Ltd., 2001 WL 482907.
Friends of Burbage School Ltd. v Woodhams [2012] EWHC 1511.
Galmerrow Securities Ltd. v National Westminster Bank Plc [1993] Unreported.
Gardner v Jelks, Transcript.
Gencor ACP Limited v Dalby [2000] 2 BCLC 734.
Gilbank v Miles [2006] EWCA 543.
Glastnos Shipping Ltd. v Panasian Shipping Corp. [1991] 1 Lloyd's Rep. 482.
Glenroy (The) [1945] AC 124.
Glenwright v St. Nicholas PCC [1988] RA 1.
Gowers v Gowers [2011] EWHC 3485.
Graphical Paper and Media Union v Derry Print Ltd. [2002] IRLR 380.
Green v Green [1993] 1 FLR 326.
Greene King Plc v Harlow District Council [2003] EWHC 2852.
Group Seven Ltd. v Allied Inv Corp. Ltd. [2013] EWHC 1509.
Hardie v C. D. Northern Ltd. [2000] ICR 207.

- Hashem v Ali Shayif and Radfan Ltd. [2009] EWHC 864.
Heavy Metal Trading BV v Raycrest Development Ltd., Transcript.
Henry Browne & Son, Ltd. v Smith [1964] 2 Lloyd's Rep. 476.
Hill v Spread Trustee Co. Ltd. [2005] EWHC 336.
Hilton v Plustitle Ltd. [1989] 1 WLR 149.
HIT Finance Ltd. v Lewis & Tucker Ltd. [1993] 2 EGLR 231.
Hogg Robinson Trustees Ltd. v J. Alsford Pensions Trustees Ltd. [1997] PLR 99.
Hogg Robinson Trustees Ltd. v J. Alsford Pensions Trustees Ltd. [1997] Pensions LR 99.
Hope v Krejci [2012] EWHC 1780.
Hughes v Customs and Excise Commissioners [2002] EWCA 734.
In re Darby [1911] 1 KB 95.
In re Muck It Ltd. [2005] EWCA 1124.
In Re Vandervell's Trusts [1974] 3 WLR 256.
In re X [2004] EWHC 861.
In the Matter of Claims Direct Test Cases [2003] EWCA 136.
In the Matter of Defra v Feakins. [2002] EWHC 980.
In the Matter of G, 2001 WL 825142.
Inland Revenue Commissioners v Sansom [1921] 2 KB 492.
Irons v Baglow [1997] EWCA 1088.
J.H. Rayner (Mincing Lane) Ltd. v Department of Trade and Industry [1988] 4 BCC 563.
Jones v Lipman [1962] 1 All ER 442.
Kapur v Shields [1976] ICR 26.
Kaye v Massbetter Ltd. [1990] 62 P & CR 558.
Keller v Cowen [2001] EWCA 1704 Transcript.
Kensington Int'l Ltd. v Republic of Congo [2005] EWHC 2684.
Kremen (formerly Agrest) v Agrest [2010] EWHC 3091.
Lander Equipment Co. v Glasgow Corp. [1973] 25 P & CR 460.
Law Society of England and Wales v Habitable Concepts Ltd. [2010] EWHC 1449.
Law Society of England and Wales v Isaac [2010] EWHC 1670.
LEP Air Services Ltd. v Rolloswin Investments Ltd. [1971] 1 WLR 934.
Lewis Trusts v Bambers Stores Ltd. [1983] FSR 453.
Lindgren v L. & P. Estates Ltd. [1968] 2 WLR 562.
Lindsay v O'Loughnane [2010] EWHC 529.
Linsen Int'l Ltd. v Humpuss Sea Transport Pte Ltd. [2011] EWCA 1042.
Littlewoods Mail Order Stores Ltd. v Inland Revenue Commissioners [1969] 1 WLR 1241.
Locke (Albert) [1973] 71 LGR 308.
Lonrho Ltd. v Shell Petroleum Co. Ltd. [1980] 2 WLR 627.
Marzell v Greater London Council [1975] RVR 201.
Melias Ltd. v Manchester Corp. [1972] RVR 174.
Meridien BIAO Bank G.m.b.H. v Bank of New York [1997] 1 Lloyd's Rep. 437.

- Michael Peters Ltd. v Farnfield and Michael Peters Group Plc [1995] IRLR 190.
- Minwalla v Minwalla [2004] EWHC 2823.
- Mobil Oil Co. Ltd. v St Pier, Transcript.
- Morin v Bonhams & Brooks Ltd. [2003] EWHC 467.
- Mubarik v Mubarik [2007] 1 WLR 271.
- Munir v Bassaid [2010] EWHC 1272.
- National and Local Government Officers Association v National Travel (Midlands), Ltd. [1978] ICR 598.
- National Westminster Bank Plc v Jones [2001] 1 BCLC 98.
- Nesbitt v Secretary of State for Trade and Industry [2007] IRLR 847.
- Nicholas v Nicholas [1984] FLR 285.
- Nightingale Mayfair Limited v Mehta, 1999 WL 1705970.
- Norglen Ltd. v Reeds Rains Prudential Ltd. [1997] 3 WLR 1177.
- Northern & Shell Plc v Champion Children of the Year Awards [2001] EWCA 1638 Transcript.
- Nozari-Zadeh v Pearl Assurance Plc [1987] 2 EGLR 91.
- Ord & Anor v Belhaven Pubs Ltd. [1998] BCC 607.
- Otkritie Int'l Investment Mgmt Ltd. v Urumov [2014] EWHC 191.
- Paulin v Paulin [2009] EWCA 221.
- Petrodel Resources v Prest [2012] EWCA 1395.
- Phillips v Revenue and Customs Commissioners [2010] UKFTT 262.
- Pinn v National Dock Labour Board, [1989] BCLC 647
- PJ v Dover DC [2010] UKUT 354.
- R v Blatch & Seager [2009] EWCA 1303.
- R v Del Basso [2010] EWCA 1119.
- R v Dimsey [2000] 2 All ER 142.
- R v Foggon [2003] EWCA 270.
- R v Gambling Commission [2012] EWHC 2391.
- R v Green [2007] EWCA 1248.
- R v Hammersmith & Fulham LBC [1981] 80 LGR 322.
- R v Harvey (Jack Frederick) [2013] EWCA 1104.
- R v Hussain (Hussan) [2014] EWCA 2344.
- R v Hyde (Gary) [2014] EWCA 713.
- R v Kaif (Daamin) [2014] EWCA 2441.
- R v May [2008] UKHL 28.
- R v McHugh [1988] 88 Cr. App. Rep. 385.
- R v MM Contracting Ltd. [2012] EWCA 2215.
- R v Omar [2004] EWCA 2320.
- R v Pearson [2006] EWCA 3366.
- R v Philippou [1989] 89 Cr. App. Rep. 290.
- R v Sale (Peter John) [2013] EWCA 1306.
- R v Sangha [2008] EWCA 2562.
- R v Stannard [2005] EWCA 2717.
- Radiation Trade Mark [1930] 47 RPC 37.
- Rainham Chemical Works, Ltd. v Belvedere Fish Guano Co., Ltd. [1921] 2 AC 465.

- Rakusen Properties Ltd. v Leeds City Council [1979] 37 P & CR 315.
Re a Company [1985] 1 BCC 99421.
Re Freudiana Holdings Ltd., Transcript.
Re G, Transcript.
Re George Newman and Co. [1895-9] All ER Rep. Ext. 2160.
Re K [2005] EWCA 619.
Re North West Holdings Plc. [2001] EWCA 67.
Re Nurkowski [2005] BPIR 842.
Re Polly Peck Int'l Plc [1996] BCC 486.
Re Tajik Air Ltd. [1996] BCC 368.
Re: D [2006] EWHC 254.
Re: H [1996] 2 All ER 391.
Re: P [1994] Unreported.
Reed v Solicitors Regulation Authority [2009] EWHC 1183.
Richard Roberts Holdings Ltd. v Douglas Smith Stimpson Partnership
[1989] 22 Con LR 69.
Richardson v Pitt-Stanley [1995] ICR 303.
Rolls Royce Plc v Doughty [1988] 1 CMLR 569.
Rothera v Nottingham City Council [1980] 39 P & CR 613.
S Dunhill General Industries v Housepower Properties, 2001 WL
513037.
Salomon v A. Salomon and Co., Ltd. [1897] AC 22.
Securities and Investments Board v Scandex Capital Mgmt. [1998] 1
WLR 712.
Security Exchange Ltd. v Gordon [1988] Unreported.
Shipping Company Uniform Inc. v International Transport Workers
[1985] ICR 245.
Smith, Stone, & Knight Ltd. v Birmingham Corp. [1939] 4 All ER 116.
Soteriou v Ultrachem Limited [2004] EWHC 983.
Spigot Lodge Ltd. v Customs & Excise Commissioners [1985] STC 255.
Sunley Turriff Holdings Ltd. v Thomson [1995] IRLR 184.
Sutcliffe v Big C's Marine Ltd. [1998] 1RLR 428.
Tecnion Investments Ltd. (Re) [1985] BCLC 434.
The "Aventicum," [1978] 1 Lloyd's Rep. 184.
The "Kafiristan," [1937] 58 Ll. L Rep. 317.
The "Maritime Trader," [1981] 2 Lloyd's Rep. 153.
The "Saudi Prince," [1982] 2 Lloyd's Rep. 255.
The Department for Environment Food and Rural Affairs v Feakins
[2004] EWHC 2735.
The King v Grubb [1915] 2 KB 683.
The Republic of Kazakhstan v Istil Group Inc. [2006] EWHC 448.
The Secretary of State for Trade and Industry v Grant, 2000 WL
33122486.
The Tiburon [1990] 2 Lloyd's Rep 418.
The Tjaskemolen [1997] CLC 521.
Trade Credit Finance No (1) Limited v Dinc Bilgin [2004] EWHC 2732.
Trustor AB v Smallbone [2001] 1 WLR 1177.

- Tunstall v Steigmann [1962] 2 QB 593.
Ultraframe (UK) Ltd. v Fielding [2005] EWHC 1638.
VTB Capital Plc v Nutritek Int'l Corp. [2013] UKSC 5.
Wallersteiner v Moir [1974] 1 WLR 991.
Wates Building Group Ltd. v Jones [1996] 59 Con LR 97.
West London Training & Enterprise Council London v Railway
Enterprise Co., 1999 WL 1610736.
Whelan v British Gas Plc [1993] 2 EGLR 243.
Williams and Humbert Ltd. v W. & H. Trade Marks [1986] 2 WLR 24.
Williams v Natural Life Health Foods Ltd. [1998] 1 BCLC 689.
Wilson v Wilson [1999] SLT 249.
Woolfson v Stratthclyde Regional Council [1979] 38 P & CR 521.
Yorkshire Metropolitan Properties Ltd. v Co-Operative Retail Services
[2001] L & TR 26.
Yukong Lines Ltd. of Korea v Rendsburg Investments Corp. [1998] BCC
870.